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Chapter No. 532

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## ***HOUSE BILL NO. 683***

Originated in House Don Richardson Clerk

HOUSE BILL NO. 683

AN ACT TO CREATE THE REVISED MISSISSIPPI LIMITED LIABILITY COMPANY ACT; TO MAKE CERTAIN GENERAL PROVISIONS, ENACT DEFINITIONS, PLACE CERTAIN RESTRICTIONS UPON NAMES ALLOWABLE FOR A LIMITED LIABILITY COMPANY AND PROVIDE FOR REGISTERED AGENTS FOR SERVICE; TO PROVIDE DEFAULT PROVISIONS FOR CHOICE OF LAW AND OTHER MATTERS; TO PROVIDE FOR FORMATION OF A LIMITED LIABILITY COMPANY AND THE CERTIFICATE OF FORMATION; TO PROVIDE FOR ANNUAL REPORTS; TO PROVIDE FOR MERGER, DISSOLUTION AND DISPOSAL OF ASSETS; TO MAKE PROVISIONS CONCERNING MEMBERS OF THE LIMITED LIABILITY COMPANY AND VOTING RIGHTS OF MEMBERS; TO PROVIDE FOR THE MANAGEMENT OF A LIMITED LIABILITY COMPANY; TO PROVIDE FOR THE CONTRIBUTIONS TO AND SHARING OF LOSSES AND PROFITS FROM A LIMITED LIABILITY COMPANY; TO MAKE PROVISIONS FOR DISTRIBUTIONS BY THE LIMITED LIABILITY COMPANY TO ITS MEMBERS; TO PROVIDE FOR THE ASSIGNMENT OF FINANCIAL INTERESTS; TO MAKE CERTAIN PROVISIONS IN THE EVENT OF DISSOLUTION AND PROVIDE FOR WINDING-UP; TO PROVIDE FOR ADMINISTRATIVE DISSOLUTION BY THE SECRETARY OF STATE UNDER CERTAIN CIRCUMSTANCES; TO MAKE PROVISION AND ENACT CERTAIN RESTRICTIONS FOR PROFESSIONAL LIMITED LIABILITY COMPANIES; TO PROVIDE FOR FOREIGN LIMITED LIABILITY COMPANIES, REQUIRE REGISTRATION THEREOF, AND PROVIDE FOR ADMINISTRATIVE REVOCATION OF REGISTRATION UNDER CERTAIN CIRCUMSTANCES; TO PROVIDE FOR DERIVATIVE ACTIONS; TO ENACT RULES OF CONSTRUCTION, IMPOSE CERTAIN FEES, AND MAKE OTHER MISCELLANEOUS PROVISIONS; TO MAKE TRANSITION PROVISIONS; TO CREATE THE "ELECTIONS SUPPORT FUND" AND PROVIDE FOR THE ALLOCATION OF THE MONIES DEPOSITED THEREIN; TO REPEAL SECTIONS 79-29-101 THROUGH 79-29-1204, MISSISSIPPI CODE OF 1972, WHICH COMPRISE THE MISSISSIPPI LIMITED LIABILITY COMPANY ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** The following is the revised Mississippi Limited Liability Company Act, and shall be codified in Title 79, Chapter 29, Mississippi Code of 1972, to replace Title 79, Chapter 29, that is repealed in Section 3 of this act:

ARTICLE 1.

GENERAL PROVISIONS

**Section 79-29-101. Short title.** This chapter shall be known and may be cited as the "Revised Mississippi Limited Liability Company Act."

**Section 79-29-103. Reservation of power to amend or repeal.** Any provision of this chapter may be altered from time to time or repealed and all rights of members, managers and officers are subject to this reservation. Unless expressly stated to the contrary in this chapter, including Article 13, any amendment of this chapter shall apply to limited liability companies and members, managers and officers without regard to either the date of the formation of the limited liability company or the date of the enactment of the amendment.

**Section 79-29-105. Definitions.** As used in this chapter, unless the context otherwise requires:

(a) "Bankruptcy" means an event that causes a member to cease to be a member as provided in Section 79-29-313 of this chapter.

(b) "Certificate of formation" means the certificate referred to in Section 79-29-201, the certificate as amended or restated, and the certificate of merger. In the case of a foreign limited liability company, the term includes all documents serving a similar function that are required to be filed to form the limited liability company in the state or other jurisdiction where it is organized.

(c) "Contribution" means any cash, property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services, which a person contributes to a limited liability company in the person's capacity as a member.

(d) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery and electronic transmission. If delivery is to the Secretary of State, delivery



may be made by electronic transmission, if, to the extent, and in the manner permitted by the Secretary of State.

(e) "Derivative proceeding" means a civil suit in the right of a limited liability company or, to the extent provided in Article 10 of this chapter, in the right of a foreign limited liability company.

(f) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

(g) "Entity" means any association or legal entity organized to conduct business, whether domestic or foreign, including, without limitation, for profit and nonprofit corporations, limited partnerships, general partnerships, limited liability partnerships, limited liability companies, joint ventures, joint-stock companies, business trusts and estates; and states, the United States, foreign governments, governmental subdivisions or governmental agencies.

(h) "Financial interests" and "financial rights" means (i) rights to share in profits and losses as provided in Section 79-29-505; (ii) rights to share in distributions as provided in Section 79-29-507; (iii) rights to receive interim distributions as provided in Section 79-29-601; (iv) rights to receive distributions upon withdrawal as provided in Section 79-29-603; (v) rights to receive allocations of income, loss, deduction, credit or similar items; (vi) appraisal rights as provided in Section 79-29-231; and (vii) any other rights granted in the certificate of formation or the operating agreement that are in addition to the above and are designated as "financial interests" or "financial rights" by the limited liability company. Financial interests may be owned by members of a limited liability company and may be owned by persons who are not members of a limited



liability company. Financial interests are assignable in whole or in part, except as otherwise provided by a limited liability company's certificate of formation or operating agreement.

(i) "Foreign," with reference to any entity, means such entity that is formed or organized under laws other than the laws of this state or under the laws of any foreign country or other foreign jurisdiction and denominated as such under the laws of such state or foreign country or other foreign jurisdiction.

(j) "Formation document" means the document that creates an entity which document is duly executed and delivered to a public official or office in the state or other foreign jurisdiction of the entity's formation pursuant to the laws under which the entity is organized or formed.

(k) "Governance interests" or "governance rights" means all of a member's rights as a member in the limited liability company other than financial rights and the right to assign financial rights, including without limitation: (i) the rights to participate in the management of the limited liability company; (ii) rights to bind the limited liability company as provided in Sections 79-29-307 and 79-29-811; (iii) the right to vote for or consent to matters requiring the vote of or consent of the members, as specified in this chapter or in the certificate of formation or operating agreement; and, unless the context otherwise requires; and (iv) rights to enjoy any privileges bestowed on members of the limited liability company. Only members shall have governance rights or own governance interests in a limited liability company.

(l) "Individual" means a natural person.

(m) "Interests" means the proprietary interests in an entity and, with respect to a member of a limited liability company, "interests" or "membership interests" are used interchangeably and shall each mean all of the governance

interests and financial interests in the limited liability company held by such member or members.

(n) "Knowledge" means a person's actual knowledge, rather than the person's constructive knowledge.

(o) "Limited liability company" or "domestic limited liability company" means an entity having one or more members that is an unincorporated company or unincorporated association formed and existing under this chapter and is not subject to Section 97-13-15.

(p) "Manager" or "managers" means a person or persons who are named in or selected or designated pursuant to, the certificate of formation or operating agreement as a manager to manage the limited liability company to the extent and as provided in the certificate of formation or operating agreement. A limited liability company whose management is vested in a manager or managers is referred to in this chapter as a manager-managed limited liability company.

(q) "Member" means a person who has been admitted to a limited liability company as provided in Section 79-29-301 or, in the case of a foreign limited liability company, in accordance with the laws under which the foreign limited liability company is organized. A member includes a member of a limited liability company who does not own a financial interest or who does not have an obligation to contribute capital to the limited liability company. A member may or may not have governance interests, including voting rights. A member may have other rights, powers or privileges as prescribed by the certificate of formation or the operating agreement. A limited liability company whose management is vested in the members is referred to in this chapter as a member-managed limited liability company.

(r) "Merger" means a business combination pursuant to Section 79-29-221.

(s) "Officer" means an individual who is named in or selected or designated pursuant to, the certificate of formation or operating agreement as an officer to manage the limited liability company to the extent and as provided in the certificate of formation or operating agreement.

(t) "Operating agreement" or "limited liability company agreement" means any agreement, whether referred to as a limited liability company agreement or otherwise, written, oral or implied, of the member or members as to the affairs of a limited liability company and the conduct of its business. A member or manager of a limited liability company or an assignee of a financial interest is bound by the operating agreement whether or not the member or manager or assignee executes the operating agreement. A limited liability company is not required to execute its operating agreement. A limited liability company is bound by its operating agreement whether or not the limited liability company executes the operating agreement. An operating agreement of a limited liability company having only one (1) member shall not be unenforceable by reason of there being only one (1) person who is a party to the operating agreement. An operating agreement may provide rights to any person, including a person who is not a party to the operating agreement, to the extent set forth therein. A written operating agreement or another written agreement or writing:

(i) May provide that a person shall be admitted as a member of a limited liability company, or shall become an assignee of a financial interest or of other rights or powers of a member to the extent assigned:

1. If the person, or a representative authorized by the person orally, in writing or by other action such as payment for a financial interest, executes the operating agreement or any other writing evidencing the intent of the person to become a member or assignee; or



2. Without such execution, if such person, or a representative authorized by such person orally, in writing or by other action such as payment for a financial interest, complies with the conditions for becoming a member or assignee as set forth in the operating agreement or any other writing; and

(ii) Shall not be unenforceable by reason of its not having been signed by a person being admitted as a member or becoming an assignee as provided in subsection (t)(i) of this subsection, or by reason of its having been signed by a representative as provided in this chapter.

(u) "Organizational documents" means the document or documents that create, or determine the internal governance of, an entity. The organizational documents of a limited liability company are the certificate of formation and the operating agreement, if any.

(v) "Person" means an individual, entity, trust, or any other legal or commercial nominee or any personal representative.

(w) "Personal representative" means, as to an individual, the executor, administrator, guardian, conservator or other legal representative thereof or the successor of such executor, administrator, guardian, conservator or legal representative; and, as to a person other than an individual, the legal representative or the successor of the legal representative. The legal representative of a member which has been placed in bankruptcy shall be the bankruptcy trustee or other representative designated in accordance with the bankruptcy code.

(x) "Professional limited liability company" is a limited liability company formed and existing under Article 9 of this chapter.

(y) "Sign" or "signature" includes any manual, facsimile, conformed or electronic signature.

(z) "State" means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession or other jurisdiction of the United States.

(aa) "Survivor" of a merger means the entity into which one or more entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

(bb) "Withdraw" or "withdrawal" means, with respect to a member of a limited liability company, any voluntary act by which, pursuant to the certificate of formation or written operating agreement, a member ceases to be a member of the limited liability company and ceases to have any governance rights. Withdrawal shall include retirement, resignation or withdrawal, but shall not include the death or expulsion of a member, any event described in Section 79-29-313, or the assignment of the member's entire interest as provided in Section 79-29-703. Any use of the term "resignation" or "retirement" in an operating agreement or certificate of formation, with respect to a member which is not defined in such document, shall mean the withdrawal of the member from the limited liability company for purposes of this chapter.

**Section 79-29-107. Form of notice and written consents. (1)**

Notice under this chapter shall be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is written notice.

(2) Notice may be communicated in person; by mail or other method of delivery; or by telephone, voice mail, email or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television or other form of public broadcast communication.

(3) Electronically transmitted written notice by a limited liability company to its members or managers, if in a comprehensible form, is effective when electronically transmitted

to the member or manager in a manner authorized by the member or manager, as applicable.

(4) Written notice that is not electronically transmitted by a limited liability company to its members or managers, if in a comprehensible form, is effective at the earliest of the following:

(a) When received;

(b) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed to the recipients shown in the limited liability company's current list of members and managers;

(c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(5) Oral notice is effective when communicated if communicated in a comprehensible manner.

(6) Any notice permitted or required to be made under this chapter or under the operating agreement may be waived at any time.

(7) A consent transmitted by electronic transmission by a person or by a person authorized to act for the person shall be deemed to be written and signed for purposes of this chapter.

**Section 79-29-109. Name.** (1) The name of each limited liability company as set forth in its certificate of formation:

(a) Must contain the words "limited liability company" or the abbreviation "L.L.C." or "LLC";

(b) May contain the name of a member or manager;

(c) Except as authorized by subsection (3) of this section, must be distinguishable upon the records of the Secretary of State from (i) the name of any domestic or foreign corporation, nonprofit corporation, limited partnership, limited liability partnership or limited liability company that is organized or registered under the laws of this state and which has not been



dissolved; and (ii) a name that is reserved or registered in the Office of the Secretary of State for any of the entities named in paragraph (1)(c)(i) of this section which reservation or registration has not expired; and

(d) May not contain the following words: "bank," "banker," "bankers," "banking," "trust company," "insurance," "trust," "corporation," "incorporated," "partnership," "limited partnership," or any combination or abbreviation thereof, or any words or abbreviations of similar import.

(2) The Secretary of State shall reject any certificate of formation that does not comply with subsection (1) of this section.

(3) A limited liability company may apply to the Secretary of State for authorization to use a name that is not distinguishable upon the records in the Office of the Secretary of State from one or more of the names described in subsection (1)(c) of this section. The Secretary of State shall authorize the use of the name applied for if:

(a) The other domestic or foreign limited liability company, limited partnership, limited liability partnership, corporation or nonprofit corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying limited liability company; or

(b) The applicant delivers to the Office of the Secretary of State for filing a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

**Section 79-29-111. Reservation of name.** (1) The right to the use of a legal name under Section 79-29-109 may be reserved by:

(a) A person intending to organize a limited liability company under this chapter and to adopt that name;

(b) A domestic limited liability company or any foreign limited liability company registered in this state which, in either case, intends to adopt that name;

(c) A foreign limited liability company intending to register in this state and adopt that name; and

(d) A person intending to organize a foreign limited liability company and intending to have it registered in this state and adopt that name.

(2) The reservation shall be made by delivering to the Office of the Secretary of State for filing an application, signed by the applicant, specifying the name to be reserved and the name and address of the applicant. If the Secretary of State finds that the name is available for use as a legal name by a domestic or foreign limited liability company, the Secretary of State shall reserve the name for the exclusive use of the applicant as a legal name for a period of one hundred eighty (180) days. Once having so reserved a name, the same applicant may not again reserve the same name until more than sixty (60) days after the expiration of the last one-hundred-eighty-day period for which that applicant reserved that name. The right to the exclusive use of a reserved name may be transferred to any other person by delivering to the Office of the Secretary of State a notice of the transfer, signed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

(3) The reservation of a specified name may be cancelled by delivering to the Office of the Secretary of State a notice of cancellation, specifying the name reservation to be cancelled and the name and address of the applicant or transferee.

(4) Unless the Secretary of State finds that any application, notice of transfer, or notice of cancellation filed with the Secretary of State as required by this section does not

conform to law, upon receipt of all filing fees required by law the Secretary shall prepare and return to the person who filed the instrument a copy of the filed instrument with a notation thereon of the action taken by the Secretary of State.

(5) A fee as set forth in Section 79-29-1203 of this chapter shall be paid at the time of the reservation of any name and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

**Section 79-29-113. Registered office and registered agent.**

(1) Each limited liability company must continuously maintain in this state:

(a) A registered office which may be the same as any of its places of business; and

(b) A registered agent for service of process on the limited liability company, which agent must be either an individual resident of this state, a domestic corporation, nonprofit corporation or limited liability company or a foreign corporation, nonprofit corporation or limited liability company authorized to transact business in this state, in each case whose business office is identical with the registered office.

(2) A limited liability company may change its registered office or registered agent by delivering to the Office of the Secretary of State for filing a certificate that sets forth:

(a) The name of the limited liability company;

(b) The street address of its current registered office;

(c) If the current registered office is to be changed, the street address of the new registered office;

(d) The name of its current registered agent;

(e) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the certificate or a statement attached to it, to the appointment; and



(f) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(3) A registered agent may change its address to another address in this state by delivering to the Office of the Secretary of State for filing a certificate, signed by the registered agent, setting forth: (a) the names of all the limited liability companies represented by the registered agent, (b) the address at which the registered agent has maintained its office for each of such limited liability companies, and (c) its new address which the registered agent will thereafter maintain for each of the limited liability companies recited in the certificate.

Upon filing this certificate, the Secretary of State will deliver to the registered agent a certified copy of the same and thereafter, or until further change of address, as authorized by law, the registered office of each of the limited liability companies recited in the certificate shall be located at the new address of the registered agent as given in the certificate. The filing by the Secretary of State of the certificate shall be deemed to be an amendment of the certificate of formation of each limited liability company affected thereby. Any registered agent delivering a certificate to the Office of the Secretary of State under this section shall promptly, upon filing by the Secretary of State, deliver a copy of any such certificate to each limited liability company affected thereby.

(4) The registered agent of one or more limited liability companies may resign its agency appointment by delivering a certificate to the Office of the Secretary of State for filing stating that it resigns as registered agent for the limited liability companies identified in the certificate, but the resignation shall not become effective until ninety (90) days after the certificate is filed by the Secretary of State. There shall be attached to the certificate an affidavit of the

registered agent that at least thirty (30) days prior to the filing of the certificate notices were sent by certified or registered mail to each limited liability company for which the registered agent is resigning as registered agent of the resignation of the registered agent. This notice shall be delivered to the last known principal office of each limited liability company identified in the certificate. After receipt of the notice of resignation of its registered agent, the limited liability company for which the registered agent was acting shall obtain and designate a new registered agent. After the resignation of the registered agent has become effective, if the limited liability company fails to obtain and designate a new registered agent, service of legal process against the limited liability company for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with Section 79-29-125(2).

**Section 79-29-115. Records to be kept.** (1) Each limited liability company shall keep at its principal place of business the following: (a) a current list of the full name and last known street address of each member and manager; (b) a copy of the certificate of formation, together with executed copies of any powers of attorney pursuant to which any certificate has been executed; (c) copies of any then effective operating agreement; and (d) unless contained in the certificate of formation or the operating agreement, a writing setting out: (i) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each member and which each member has agreed to contribute; (ii) the times at which or events on the happening of which any additional contributions agreed to be made by each member are to be made; and (iii) any events upon the happening of which the limited liability company is to be dissolved and its affairs wound up.



(2) The failure of the limited liability company to maintain the foregoing required records shall not, for this reason, cause any member to be liable for any debt, obligation or liability of the limited liability company.

**Section 79-29-117. Nature of business; powers.** (1) Subject to the provisions of its certificate of formation or the operating agreement and subject to any other laws of this state which govern or limit the conduct of a particular business or activity, a limited liability company may carry on any lawful business, purpose or activity.

(2) Every limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs.

**Section 79-29-119. Governing law.** The law of this state governs:

(a) The internal affairs of a limited liability company; and

(b) The liability of a member as member, a manager as manager and an officer as officer for the debts, obligations, or other liabilities of a limited liability company.

**Section 79-29-121. Business transactions of member or manager with the limited liability company.** A member or manager may lend money to and transact other business with the limited liability company and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a member or manager.

**Section 79-29-123. General standards of conduct and construction and application of certificate of formation and operating agreement; scope, function, and limitations.** (1) An operating agreement must initially be agreed to by all of the members. Except as otherwise provided in subsections (2) and (3) of this section, the certificate of formation or operating agreement governs:



(a) The affairs of a limited liability company, the conduct of its business and the relations of its members among the members as members and between the members and the limited liability company;

(b) The rights, powers and duties under this chapter of a person in the capacity of member, manager, officer or other person who is a party to or is otherwise bound by the operating agreement;

(c) The activities of the limited liability company and the conduct of those activities; and

(d) The means and conditions for amending the operating agreement.

(2) To the extent that: (a) the provisions of the operating agreement are not inconsistent with the certificate of formation, the operating agreement governs the matters described in subsections (a) through (d) of subsection (1) of this section; (b) the certificate of formation or operating agreement does not provide for the method by which an operating agreement may be amended, then all of the members must agree to any amendment of an operating agreement, except an amendment that occurs as the result of a merger with a domestic or foreign limited liability company must be approved by a majority of the members; and (c) the certificate of formation or operating agreement does not otherwise provide for a matter described in paragraphs (a) through (d) of subsection (1) of this section, this chapter governs the matter.

(3) Except as provided in this subsection (3), the provisions of this chapter that relate to the matters described in paragraphs (a) through (d) of subsection (1) of this section may be waived, restricted, limited, eliminated or varied by the certificate of formation or operating agreement. In addition to the restrictions set forth in subsections (4) and (5) of this section, the certificate of formation or the operating agreement may not:

(a) Vary the requirement set forth in subsection (1) of this section that the initial operating agreement must be agreed to by all of the members;

(b) Vary a limited liability company's capacity to sue and be sued in its own name;

(c) Vary the law applicable under Section 79-29-119;

(d) Vary the power of the court under Section 79-29-209;

(e) Restrict the right to approve a merger under Section 79-29-223(e) to a member who will have personal liability with respect to a survivor;

(f) Restrict the right to approve an asset sale agreement under Section 79-29-233(e) to a member who will have personal liability with respect to any entity;

(g) Eliminate the implied contractual covenant of good faith and fair dealing of a member, manager, officer or other person who is a party to the operating agreement or who is otherwise bound by the operating agreement;

(h) Unreasonably restrict the duties and rights stated in Section 79-29-315;

(i) Waive the requirement of Section 79-29-503(1) that a contribution obligation be in writing;

(j) Vary the requirement to wind-up a limited liability company's business following the filing of a certificate of dissolution as specified in Section 79-29-801;

(k) Vary the manner of the distribution of assets in connection with the winding-up of a limited liability company's business as required by Section 79-29-813(1)(a);

(l) Vary the power of a court to decree dissolution in the circumstances specified in Section 79-29-803(1) or to appoint trustees or receivers as specified in Section 79-29-815;

(m) Vary the requirements of Sections 79-29-817 and 79-29-819;

(n) Vary or modify any provision of Article 9 of this chapter unless otherwise expressly provided in Article 9 that the certificate of formation or the operating agreement may vary or modify such provision;

(o) Unreasonably restrict the right of a member to maintain an action under Article 11 of this chapter;

(p) Vary any requirement set forth in this chapter that an agreement must be contained in either the certificate of formation or a written operating agreement to be enforceable; or

(q) Vary any provision set forth in this chapter relating to filing, fees or any action with or by the Secretary of State's office.

(4) The certificate of formation or an operating agreement may provide for the limitation or elimination of any and all liabilities of any manager, member, officer or other person who is a party to or is otherwise bound by the operating agreement for any action taken, or failure to take any action, as a manager or member or other person, including, for breach of contract and for breach of duties, including all or any fiduciary duties, of a member, manager, officer or other person to a limited liability company or to its members or to another member or manager or officer or to another person; provided, that the certificate of formation or an operating agreement may not limit or eliminate liability for:

(a) The amount of a financial benefit by a member or manager to which the member or manager is not entitled;

(b) An intentional infliction of harm on the limited liability company or the members;

(c) An intentional violation of criminal law;

(d) A violation of Section 79-29-611;

(e) The amount of a distribution in violation of Section 79-29-813(1); or



(f) Any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

(5) Indemnification. (a) A limited liability company may, and shall have the power to, indemnify and hold harmless any member, manager, officer or other person from and against any and all claims and demands whatsoever, except a limited liability company and an operating agreement shall not indemnify any member, manager, officer or other person from and against any claims or demands in connection with a proceeding by or in the right of the limited liability company in which the member, manager or other person was:

(i) Found to have engaged in acts or omissions that constitute fraudulent conduct and was adjudged liable for claims based on such conduct; or

(ii) Was found to have engaged in any actions described in subsection (4) of this section and was adjudged liable for claims based on such actions.

(b) A limited liability company shall indemnify a member, manager, officer or other person who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the person was a party because the person is or was a member, manager, officer or agent of the limited liability company against reasonable expenses incurred by the member, manager, officer or agent in connection with the proceeding.

(c) Each such indemnity may continue as to a person who has ceased to have the capacity referred to in subsection (5)(a) of this section and may inure to the benefit of the heirs, beneficiaries and personal representatives of such person.

(6) General standards of conduct. Subject to the certificate of formation or the terms of a written operating agreement or other written agreement, which may expand, eliminate

or restrict the following, except as provided in subsection (4)(f) of this section,

(a) A manager:

(i) Shall discharge the duties of a manager;

1. In good faith and with fair dealing;
2. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
3. In a manner the manager reasonably believes to be in the best interests of the limited liability company.

(ii) Shall not be liable to a limited liability company or to another member or manager or to another person who is a party to or is otherwise bound by an operating agreement for the following:

1. For any action taken as a manager, or any failure to take any action, if such manager performed the duties of such manager in compliance with subsection (6)(a)(i) of this section.

2. For breach of fiduciary duty for the manager's good faith reliance on the provisions of the operating agreement.

(b) An officer:

(i) Shall discharge the duties of an officer;

1. In good faith and with fair dealing;
2. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
3. In a manner the officer reasonably believes to be in the best interests of the limited liability company.

(ii) Shall not be liable to a limited liability company or to another member or manager or to another person who is a party to or is otherwise bound by an operating agreement for the following:

1. For any action taken as an officer, or any failure to take any action, if such officer performed the duties of such member in compliance with subsection (6)(b)(i) of this section; and

2. For breach of fiduciary duty for the officer's good faith reliance on the provisions of the operating agreement.

(c) A member of a member-managed limited liability company:

(i) Shall discharge the duties of a member of a member-managed limited liability company;

1. In good faith and with fair dealing;

2. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

3. In a manner the person reasonably believes to be in the best interests of the limited liability company.

(ii) Shall not be liable to a limited liability company or to another member or manager or to another person who is a party to or is otherwise bound by an operating agreement for the following:

1. For any action taken as a member of a member-managed limited liability company, or any failure to take any action, if such member performed the duties of such member in compliance with subsection (6)(c)(i) of this section.

2. For breach of fiduciary duty for the member's good faith reliance on the provisions of the operating agreement.

(d) To the extent that, at law or in equity, a member of a manager-managed limited liability company or other person has duties, including fiduciary duties set forth in this chapter, to a limited liability company or to another member or manager or to another person who is a party to or is otherwise bound by an operating agreement, such member's or other person's fiduciary



duties may be expanded, restricted or eliminated by provisions in the certificate of formation or the written operating agreement.

(e) The operating agreement may:

(i) Identify specific categories of activities that do not violate the duty of loyalty;

(ii) Alter or eliminate any other fiduciary duty, including eliminating particular aspects of that duty; and

(iii) If not manifestly unreasonable, prescribe the standards by which to measure the performance of the implied contractual covenant of good faith and fair dealing under Section 79-29-123(3)(g).

(7) Any agreement relating to or governing any event, act, omission, duty, right, power or liability under or pursuant to the following sections of this chapter must be expressly contained in either the certificate of formation or a written operating agreement in order to be enforceable:

- (a) Section 79-29-123(4);
- (b) Section 79-29-123(6);
- (c) Section 79-29-231;
- (d) Section 79-29-301(6);
- (e) Section 79-29-303;
- (f) Section 79-29-309;
- (g) Section 79-29-313(1);
- (h) Section 79-29-801; and
- (i) Section 79-29-1211.

(8) A court of equity:

(a) May enforce an operating agreement by injunction or by such other relief that the court in its discretion determines to be fair and appropriate in the circumstances or, when the provisions of Section 79-29-803 are applicable, the court may order dissolution of the limited liability company; and

(b) Shall decide any claim under subsection (6)(e)(iii) of this section that such standard is manifestly unreasonable.

The court:

(i) Shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and

(ii) May invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that:

1. The objective of the term is unreasonable;

or

2. The term is an unreasonable means to achieve the provision's objective.

**Section 79-29-125. Service on limited liability company.**

(1) A limited liability company's registered agent is the limited liability company's agent for service of process, notice or demand required or permitted by law to be served on the limited liability company.

(2) If a limited liability company has no registered agent, or the agent cannot with reasonable diligence be served, service of legal process against the limited liability company shall be upon the Secretary of State in accordance with the Rules of Civil Procedure of this state. Service is perfected under this subsection at the earliest of:

(a) The date the limited liability company receives the mail;

(b) The date shown on the return receipt, if signed on behalf of the limited liability company; or

(c) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed.

(3) This section does not prescribe the only means, or necessarily the required means, of serving a limited liability company.

**Section 79-29-127. Taxation.** Domestic limited liability companies and foreign limited liability companies shall be classified as an entity for purposes of the income tax laws of this state in the same manner as they are classified for federal income tax purposes.

ARTICLE 2.

FORMATION, CERTIFICATE OF FORMATION

**Section 79-29-201. Certificate of formation.** (1) In order to form a limited liability company, a certificate of formation must be signed and delivered to the Office of the Secretary of State. The certificate must set forth:

(a) The name of the limited liability company;

(b) The street and mailing address of the registered office and the name and the street and mailing address of the registered agent for service of process, required to be maintained by Section 79-29-113; and

(c) If the limited liability company is to have a specific date of dissolution, the latest date upon which the limited liability company is to dissolve.

(2) The certificate of formation may set forth any other matters the members determine to include therein.

(3) A limited liability company is formed at the date and time of the filing of the certificate of formation by the Secretary of State, as evidenced by such means as the Secretary of State may use for the purpose of recording the date and time of filing, or at any later date or time specified in the certificate of formation if, in either case, the certificate of formation so filed substantially complies with the requirements of this chapter. A delayed effective date specified in a certificate of formation may not be later than the ninetieth day after the date and time it is filed by the Secretary of State.

(4) For all purposes, a copy of the certificate of formation duly certified by the Secretary of State is conclusive evidence of



the formation of a limited liability company and prima facie evidence of its existence.

**Section 79-29-203. Amendment to or restatement of certificate.** (1) A certificate of formation is amended or restated by delivering a certificate of amendment thereto to the Office of the Secretary of State for filing. The certificate shall set forth:

(a) The name of the limited liability company;

(b) The future effective date of the amendment or restatement, which must be a date certain not later than the ninetieth day after the date it is filed by the Secretary of State, unless it is effective upon the filing of the certificate of amendment; and

(c) The amendment to or restatement of the certificate.

(2) A certificate of formation may be amended or restated at any time for any other proper purpose.

(3) All members must agree to any amendment to or restatement of the certificate of formation.

**Section 79-29-205. Certificate of dissolution.** (1) A certificate of dissolution must be delivered to the Office of the Secretary of State for filing upon commencement of winding-up of the limited liability company in connection with the dissolution of the limited liability company pursuant to Article 8 of this chapter. A certificate of dissolution must be delivered to the Office of the Secretary of State for filing and must set forth:

(a) The name of the limited liability company;

(b) The future effective date of dissolution, which must be a date certain not later than the ninetieth day after it is filed by the Secretary of State, unless it is effective upon the filing of the certificate; and

(c) Any other information the person delivering the certificate for filing determines.

(2) The Secretary of State shall not issue a certificate of existence with respect to a limited liability company after the effective date of the certificate of dissolution of such limited liability company.

**Section 79-29-207. Signing of certificates.** (1) Unless otherwise specified in any other section of this chapter, any document required by this chapter to be delivered to the Office of the Secretary of State for filing shall be signed by any one or more authorized persons.

(2) The person signing the document shall state the person's name beneath or opposite the person's signature, the capacity in which the person signs and the person's street and mailing address. A document required or permitted to be delivered to the Office of the Secretary of State for filing under this chapter which contains a copy of a signature, however made, is acceptable for filing by the Secretary of State.

(3) Any person may sign a certificate, an operating agreement or any amendment to either by an agent, including an attorney-in-fact.

(4) A person commits an offense if the person signs a document with the knowledge that it is false in any material respect with intent that the document be delivered to the Office of the Secretary of State for filing. An offense under this provision is a misdemeanor punishable by a fine not to exceed One Thousand Dollars (\$1,000.00).

**Section 79-29-209. Amendment or dissolution by judicial act.** If a person required by this Article 2 to sign a certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the chancery court of the county in which the principal office (or, if none in this state, the registered office) of the limited liability company is located to direct the signing of the certificate. If the court finds that it is proper for the certificate to be signed and that any person

so designated has failed or refused to sign the certificate, it shall order appropriate relief, including an order to the Secretary of State to file an appropriate certificate.

**Section 79-29-211. Filing with the Secretary of State. (1)**

The certificate of formation and of any certificate of amendment, dissolution, correction or merger and any restated certificate or of any judicial decree of amendment, dissolution or merger or restated certificate and any certificate filed by the Secretary of State pursuant to Section 79-29-113 must be delivered to the Office of the Secretary of State. A person who signs a certificate as an agent or fiduciary need not exhibit evidence of the person's authority as a prerequisite to filing by the Secretary of State. Unless the Secretary of State finds that a certificate is not acceptable for filing, upon receipt of all filing fees required by Section 79-29-1203 and delivery of the certificate the Secretary of State shall:

(a) Certify that the certificate has been filed in the Secretary of State's office by endorsing upon the signed certificate the word "Filed" and the date and time of the filing. This endorsement is conclusive evidence of the date and time of its filing in absence of actual fraud;

(b) File the certificate; and

(c) Return a copy to the person who delivered it for filing or that person's representative with an acknowledgment of the date and time of filing.

(2) Upon the filing of a certificate of amendment or judicial decree of amendment, certificate of correction or an amended and restated certificate by the Secretary of State or upon the future effective date of a certificate of amendment (or judicial decree thereof) or an amended and restated certificate, as provided for therein, the certificate of formation shall be amended, corrected or restated as set forth therein. Upon the filing of a certificate of dissolution (or a judicial decree



thereof) by the Secretary of State or upon the future effective date of a certificate of dissolution (or a judicial decree thereof), the certificate of formation is dissolved.

(3) Each certificate delivered to the Office of the Secretary of State for filing must be typewritten or printed, or, if electronically transmitted, it must be in a format that can be retrieved or reproduced by the Secretary of State in typewritten or printed form, and must be in the English language. A limited liability company name need not be in English if written in English letters or Arabic or Roman numerals.

(4) Refused documents shall be returned by the Secretary of State to the limited liability company or its representative within ten (10) days after the document was delivered, together with a brief, written explanation of the reason for the refusal.

(a) If the Secretary of State refuses to file a document, the limited liability company may appeal the refusal to the chancery court of the county where the limited liability company's principal office is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State's explanation of the refusal to file.

(b) The court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

(5) A certificate from the Secretary of State delivered with a copy of the document filed by the Secretary of State is conclusive evidence that the original document is on file with the Secretary of State.

**Section 79-29-213. Correction of filings made with the Secretary of State.** In the event that a manager or member becomes aware that any statement in a certificate of formation or any

other filing was false or inaccurate when made, or that such filing was defectively or erroneously executed, such member or manager shall then promptly take one (1) of the following actions, as applicable, to correct such filing or certificate:

(a) If the correction is to be made within one (1) year of the date of the filing to be corrected, then the certificate may be corrected by filing a certificate of correction of the certificate with the Office of the Secretary of State. The certificate of correction shall specify the inaccuracy or defect to be corrected, shall set forth the portion of the certificate in corrected form, and shall be executed and filed as required by this chapter. The certificate of correction shall be effective as of the date the original certificate was filed, except as to those persons who are substantially and adversely affected by the correction, and as to those persons the certificate of correction shall be effective from the filing date; or

(b) If the correction is to be made after one (1) year of the date of the filing to be corrected then the person shall correct the certificate or filing by filing a certificate of amendment as provided by Section 79-29-203. Any amendment made pursuant to this subsection (b) shall be effective upon the filing of the certificate of amendment.

**Section 79-29-215. Annual report for Secretary of State.**

(1) Each domestic limited liability company and each foreign limited liability company authorized to transact business in this state shall deliver on such date as may be established by the Secretary of State, to the Secretary of State for filing an annual report that sets forth:

(a) The name of the limited liability company and the state or country or other foreign jurisdiction under whose law it is organized;

(b) The name and street or physical address of its registered agent in this state;

(c) The address of its principal office;

(d) The names and business addresses of the managers if manager-managed and the name and address of at least one (1) member if member-managed;

(e) The names, titles and business addresses of its principal officers, if any;

(f) A statement as to whether the limited liability company has a written operating agreement; and

(g) A brief description of the nature of its business.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

(3) If an annual report does not contain the information required by this section, the Secretary of State shall notify promptly in writing the reporting limited liability company and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within thirty (30) days after the effective date of notice, it is deemed to be timely filed.

**Section 79-29-217. Notice.** Certificates of formation and all other documents properly filed and of record with the Office of the Secretary of State constitute notice to the public of all information stated therein.

**Section 79-29-219. Certificate of existence.** (1) The Secretary of State, upon request and payment of the requisite fee, shall furnish to any person a certificate of existence for a limited liability company if the records filed in the Office of the Secretary of State show that the limited liability company has been formed under Section 79-29-201 and a certificate of dissolution or certificate of administrative dissolution pertaining to the limited liability company has not been filed that has become effective. A certificate of existence must state:

(a) The name of the limited liability company;



(b) That the limited liability company was duly formed under the laws of this state and the date of formation;

(c) Whether all fees due under this chapter to the Secretary of State have been paid,

(d) Whether the limited liability company's most recent annual report required by Section 79-29-215 has been filed with the Secretary of State;

(e) Whether a certificate of administrative dissolution has been filed;

(f) Whether a certificate of dissolution has been filed, and

(g) Other facts of record in the Office of the Secretary of State which are specified by the person requesting the certificate.

(2) Subject to any qualification stated in the certificate, a certificate of existence issued by the Secretary of State is conclusive evidence that the limited liability company is in existence.

**Section 79-29-221. Merger of limited liability company.** (1) One or more domestic limited liability companies may merge with a domestic or foreign entity pursuant to an agreement of merger.

(2) A domestic or foreign entity may be a party to the merger, or may be created by the terms of the agreement of merger, only if:

(a) The merger is permitted by the laws under which the entity is organized or by which it is governed; and

(b) In effecting the merger, the entity complies with such laws and with its organizational documents.

(3) The agreement of merger must include:

(a) The name of each entity that will merge and the name of the entity that will be the survivor of the merger;

(b) The terms and conditions of the merger;

(c) The manner and basis of converting the interests of each merging entity into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing;

(d) The organizational documents of any entity to be created by the merger, or if a new entity is not to be created by the merger, any amendments to the survivor's organizational documents; and

(e) Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the organizational documents of any such party.

(4) The terms described in subsections (3)(b) and (3)(c) of this section may be made dependent on facts ascertainable outside the agreement of merger, provided that those facts are objectively ascertainable. The term "facts" includes, but is not limited to, the occurrence of any event, including a determination or action by any person, including the limited liability company.

(5) The agreement of merger may also include a provision that the agreement of merger may be amended prior to filing the certificate of merger with the Secretary of State, provided that if the members of a domestic limited liability company that is a party to the merger are required or permitted to vote on the agreement of merger, the agreement of merger must provide that subsequent to approval of the agreement of merger by such members the agreement of merger may not be amended to:

(a) Change the amount or kind of shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, or other property to be received by the owners of interests in any party to the merger upon conversion of their interests under the agreement of merger;

(b) Change the organizational documents of any other entity that will survive or be created as a result of the merger;

or

(c) Change any of the other terms or conditions of the agreement of merger if the change would adversely affect such members in any material respect

**Section 79-29-223. Action on an agreement of merger.** In the case of a limited liability company that is a party to a merger:

(a) The agreement of merger must be adopted by the members in accordance with subsection (c) of this section.

(b) Unless the agreement of merger is not required to be approved by the members, the limited liability company must notify each member and each owner of a financial interest, whether or not entitled to vote, of the meeting of members at which the agreement of merger is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the agreement of merger and must contain or be accompanied by a copy or summary of the agreement of merger. If the limited liability company is to be merged into an existing entity, the notice shall also include or be accompanied by a copy or summary of the organizational documents of that entity. If the limited liability company is to be merged into an entity that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or a summary of the organizational documents of the new entity.

(c) Approval of the agreement of merger requires the approval of at least a majority of the votes entitled to be cast on the agreement of merger, and, if any class or series of interests is entitled to vote as a separate group on the agreement of merger, the approval of at least a majority of the votes entitled to be cast on the merger by that voting group.

(d) Separate voting by voting groups is required:

(i) On an agreement of merger, by each class or series of interests that: 1. are to be converted, pursuant to the provisions of the agreement of merger, into shares or other securities, interests, obligations, rights to acquire interests or



other securities, cash, other property, or any combination of the foregoing; or 2. would have a right to vote as a separate group on a provision in the agreement of merger that, if contained in a proposed amendment to the certificate of formation or operating agreement, would require action by separate voting groups under the certificate of formation or operating agreement;

(ii) On an agreement of merger, if the voting group is entitled under the certificate of formation or operating agreement, to vote as a voting group to approve an agreement of merger.

(e) If as a result of a merger one or more members or owners of a financial interest of a domestic limited liability company would become subject to personal liability for the obligations or liabilities of any entity, approval of the agreement of merger shall require the execution, by each such member and owner of a financial interest, of a separate written consent to become subject to such personal liability.

**Section 79-29-225. Certificate of merger.** After an agreement of merger has been adopted and approved as required by this chapter, a certificate of merger shall be executed on behalf of each party to the merger by an authorized person. The certificate shall set forth:

(a) The names and jurisdictions of formation or organization of the parties to the merger and the date on which the merger occurred or is to be effective;

(b) If the formation document of the survivor of a merger is amended, or if a new entity is created as a result of a merger, the amendments to the formation document of the survivor or the formation document of the new entity;

(c) A statement that the agreement of merger was duly approved by the members and, if voting by any separate voting group was required, by each such separate voting group, in the

manner required by this chapter and the certificate of formation and operating agreement;

(d) As to each entity that was a party to the merger, a statement that the agreement of merger and the performance of its terms were duly authorized by all action required by the laws under which the entity is organized, or by which it is governed, and by its organizational documents; and

(e) The future effective date of the merger, which shall be a date or time certain not later than the ninetieth day after the date it is filed, if it is not to be effective upon the filing of the certificate of merger.

**Section 79-29-227. Effect of merger.** (1) When a merger becomes effective:

(a) The entity that is designated in the agreement of merger as the survivor continues or comes into existence, as the case may be,

(b) The separate existence of every entity that is merged into the survivor ceases;

(c) All property owned by, and every contract right possessed by, each entity that merges into the survivor is vested in the survivor without reversion or impairment;

(d) All liabilities of each entity that is merged into the survivor are vested in the survivor;

(e) The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(f) The organizational documents of the survivor are amended to the extent provided in the agreement of merger;

(g) The organizational documents of a survivor that is created by the merger become effective; and

(h) The interests in an entity that is a party to a merger that are to be converted under the agreement of merger into shares interests, obligations, rights to acquire securities, other

securities, cash, other property, or any combination of the foregoing, are converted, and the former holders of such interests are entitled only to the rights provided to them in the agreement of merger or to any rights they may have under Section 79-29-231.

(2) Any member or owner of a financial interest of a domestic limited liability company that is a party to a merger who, prior to the merger, was liable for the liabilities or obligations of such limited liability company shall not be released from such liabilities or obligations by reason of the merger.

(3) Upon a merger becoming effective, a foreign entity that is the survivor of the merger is deemed to:

(a) Appoint the Secretary of State as its agent for service of process in a proceeding to enforce the rights of the members and owners of a financial interest of each domestic limited liability company that is a party to the merger who exercise appraisal rights; and

(b) Agree that it will promptly pay the amount, if any, to which such members and owners of a financial interest are entitled under Section 79-29-231.

**Section 79-29-229. Abandonment of a merger.** (1) Unless otherwise provided in an agreement of merger or in the laws under which a domestic or foreign entity that is a party to a merger is organized or by which it is governed, after the agreement of merger has been adopted and approved as required by this chapter, and at any time before the merger has become effective, it may be abandoned by any party thereto without action by the party's owners of interests, in accordance with any procedures set forth in the agreement of merger or, if no such procedures are set forth in the agreement of merger, in the manner determined by the entity subject to any contractual rights of other parties to the merger.

(2) If a merger is abandoned under subsection (1) of this section after a certificate of merger has been filed with the



Secretary of State but before the merger has become effective, a statement that the merger has been abandoned in accordance with this subsection, executed on behalf of a party to the merger by any authorized person shall be delivered to the Secretary of State for filing prior to the effective date of the merger. Upon filing, the statement shall take effect and the merger shall be deemed abandoned and shall not become effective.

**Section 79-29-231. Appraisal rights.** (1) The certificate of formation or written operating agreement may eliminate, expand or restrict the appraisal rights granted in this section and may vary, modify, eliminate or expand any of the provisions of this section

(2) **Definitions.** In this section:

(a) "Entitled persons" means all owners of financial interests. Financial interests may be owned by members and may also be owned by persons who are not members of the limited liability company. Members of the limited liability company who have no financial interests in the limited liability company are not entitled to appraisal rights pursuant to this section.

(b) "Fair value" means the value of the financial interests of the limited liability company determined:

(i) Immediately before the effectuation of the action to which the entitled person objects;

(ii) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(iii) Without discounting for lack of marketability or minority status.

(3) **Right to appraisal.** (a) Unless otherwise provided in the certificate of formation or written operating agreement or other written agreement each entitled person is entitled to appraisal rights, and to obtain payment of the fair value of the

entitled person's financial interest in the event of any of the following actions:

- (i) Consummation of a merger to which the limited liability company is a party;

- (ii) Consummation of a sale, lease, exchange, or other disposition of assets if the disposition would leave the limited liability company without a significant continuing business activity. If a limited liability company retains a business activity that represented at least twenty-five percent (25%) of total assets at the end of the most recently completed fiscal year, and twenty-five percent (25%) of either income from continuing operations or revenues from continuing operations for that fiscal year, in each case of the limited liability company and its subsidiaries on a consolidated basis, the limited liability company will conclusively be deemed to have retained a significant continuing business activity;

- (iii) Any other action to the extent provided by the certificate of formation or written operating agreement.

(b) An entitled person may not challenge a completed action for which appraisal rights are available unless such action:

- (i) Was not effectuated in accordance with the applicable provisions of this chapter or the limited liability company's certificate of formation or operating agreement; or

- (ii) Was procured as a result of fraud or material misrepresentation.

(4) **Notice of appraisal rights.** If a proposed action described in subsection (3) of this section is to be submitted to a vote, the meeting notice must state that the limited liability company has concluded that entitled persons are entitled to assert appraisal rights under this section and a copy of this section or a copy of the appraisal rights and procedures as provided in the

written operating agreement, as applicable, must accompany the meeting notice sent to the entitled persons.

(5) **Notice of intent to demand payment.** (a) If a proposed action requiring appraisal rights under subsection (3)(a) of this section is submitted to a vote, entitled persons who wish to assert appraisal rights with respect to any class or series of financial interests:

(i) Must deliver to the limited liability company before the vote is taken written notice of the person's intent to demand payment if the proposed action is effectuated; and

(ii) Must not vote, or cause or permit to be voted, any of the person's financial interests in favor of the proposed action.

(b) An entitled person who does not satisfy the requirements of subsection (5)(a) of this section is not entitled to payment under this section.

(6) **Appraisal notice and form.** (a) If a proposed action requiring appraisal rights under subsection (3) of this section becomes effective, the limited liability company must deliver a written appraisal notice and form required by this subsection (6) to all entitled persons who satisfied the requirements of subsection (5) of this section.

(b) The appraisal notice must be sent no earlier than the date the action became effective and no later than ten (10) days after such date and must:

(i) Supply a form that specifies the date of the first announcement to entitled persons of the principal terms of the proposed action and requires the person asserting appraisal rights to certify: 1. whether the entitled person acquired ownership of the interests for which appraisal rights are asserted before that date; and 2. that the person did not vote for the transaction;

(ii) State:



1. Where the form must be sent and where certificates for certificated interests must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subsection (6)(b)(ii)2 of this section;

2. A date by which the limited liability company must receive the form which date may not be fewer than forty (40) nor more than sixty (60) days after the date the subsection (6)(a) appraisal notice and form are sent, and state that the person shall have waived the right to demand appraisal with respect to the interests unless the form is received by the limited liability company by such specified date;

3. The limited liability company's estimate of the fair value of the financial interests;

4. That, if requested in writing, the limited liability company will provide to the person so requesting, within ten (10) days after the date specified in subsection (6)(b)(ii)2 of this section, the number of persons who return the forms by the specified date and the aggregate interests owned by them; and

5. The date by which the notice to withdraw under subsection (7) must be received, which date must be within twenty (20) days after the date specified in subsection (6)(b)(ii)2 of this section; and

(c) Be accompanied by a copy of this section or by a copy of the appraisal rights and procedures as provided in the written operating agreement, as applicable.

(7) **Perfection of rights; right to withdraw.** (a) An entitled person who receives notice pursuant to subsection (6) of this section and who wishes to exercise appraisal rights must certify on the form sent by the limited liability company whether the entitled person acquired ownership of the person's financial interests before the date required to be set forth in the notice pursuant to subsection (6)(b) of this section. If an entitled

person fails to make this certification, the limited liability company may elect to treat the entitled person's financial interests as after-acquired interests under subsection (9) of this section. In addition, an entitled person who wishes to exercise appraisal rights must execute and return the form and, in the case of certificated interests, deposit the entitled person's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to subsection (6)(b)(ii)2 of this section. Once an entitled person deposits that person's certificates or, in the case of uncertificated interests, returns the executed forms, that entitled person loses all rights as a member or owner of a financial interest, unless the entitled person withdraws pursuant to subsection (7)(b) of this section.

(b) An entitled person who has complied with subsection (7)(a) of this section may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the limited liability company in writing by the date set forth in the appraisal notice pursuant to subsection (6)(b)(ii)5 of this section. An entitled person who fails to so withdraw from the appraisal process may not thereafter withdraw from the appraisal process without the limited liability company's written consent.

(c) An entitled person who does not execute and return the form and, in the case of certificated interests, deposit that person's certificates where required, each by the date set forth in the notice described in subsection (6)(b)(ii)2 of this section, shall not be entitled to payment under this subsection.

(8) **Payment.** (a) Except as provided in subsection (7) of this section, within thirty (30) days after the form required by subsection (6)(b)(ii)2 of this section is due, the limited liability company shall pay in cash to those entitled persons who complied with subsection (7)(a) of this section the amount the

limited liability company estimates to be the fair value of their financial interests, plus interest at the legal rate.

(b) The payment to each person pursuant to subsection (8)(a) of this section must be accompanied by:

(i) Financial statements of the limited liability company that issued the financial interests to be appraised, consisting of a balance sheet as of the end of a fiscal year ending not more than sixteen (16) months before the date of payment, an income statement for that year, a statement of changes in equity for that year, and the latest available interim financial statements, if any;

(ii) A statement of the limited liability company's estimate of the fair value of the financial interests, which estimate must equal or exceed the limited liability company's estimate given pursuant to subsection (6)(b)(ii)3 of this section;

(iii) A statement that persons described in this subsection (8) have the right to demand further payment under subsection (10) of this section and that if any such person does not do so within the time period specified therein, the person shall be deemed to have accepted the payment in full satisfaction of the limited liability company's obligations under this section.

(9) **After-acquired interests.** (a) A limited liability company may elect to withhold payment required by subsection (8) of this section from any entitled person who did not certify that ownership of all of the entitled person's financial interests for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to subsection (6)(b)(i) of this section.

(b) If the limited liability company elected to withhold payment under subsection (9)(a) of this section, it must, within thirty (30) days after the form required by subsection



(6) (b) (ii) 2 of this section is due, notify all entitled persons who are described in subsection (9) (a) of this section:

(i) Of the information required by subsection (8) (b) (i) of this section;

(ii) Of the limited liability company's estimate of fair value pursuant to subsection (8) (b) (ii) of this section;

(iii) That they may accept the limited liability company's estimate of fair value, plus interest at the legal rate, in full satisfaction of their demands, or demand appraisal under subsection (10) of this section;

(iv) That those entitled persons who wish to accept the offer must so notify the limited liability company of the person's acceptance of the limited liability company's offer within thirty (30) days after receiving the offer; and

(v) That those entitled persons who do not satisfy the requirements for demanding appraisal under subsection (10) of this section shall be deemed to have accepted the limited liability company's offer.

(c) Within ten (10) days after receiving the entitled person's acceptance pursuant to subsection (9) (b) of this section, the limited liability company must pay in cash the amount it offered under subsection (9) (b) (ii) of this section to each person who agreed to accept the limited liability company's offer in full satisfaction of the person's demand.

(d) Within forty (40) days after sending the notice described in subsection (9) (b) of this section, the limited liability company must pay in cash the amount it offered to pay under subsection (8) (b) of this section to each entitled person described in subsection (9) (b) (ii) of this section.

**(10) Procedure if entitled person dissatisfied with payment or offer.** (a) An entitled person paid pursuant to subsection (8) of this section who is dissatisfied with the amount of the payment must notify the limited liability company in writing of that

person's estimate of the fair value of the financial interests and demand payment of that estimate plus interest at the legal rate less any payment under subsection (8) of this section. An entitled person offered payment under subsection (9) of this section who is dissatisfied with that offer must reject the offer and demand payment of the person's stated estimate of the fair value of the financial interests plus interest at the legal rate.

(b) An entitled person who fails to notify the limited liability company in writing of that entitled person's demand to be paid the entitled person's stated estimate of the fair value plus interest at the legal rate under subsection (10)(a) of this section within thirty (30) days after receiving the limited liability company's payment or offer of payment under subsections (8) or (9) of this section, respectively, waives the right to demand payment under this subsection (10) and shall be entitled only to the payment made or offered pursuant to those respective subsections.

(11) **Court action.** (a) If an entitled person makes demand for payment under subsection (10) of this section which remains unsettled, the limited liability company shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the court to determine the fair value of the financial interests and accrued interest at the legal rate. If the limited liability company does not commence the proceeding within the sixty-day period, it shall pay in cash to each the entitled person the amount the entitled person demanded pursuant to subsection (10)(a) of this section plus interest at the legal rate.

(b) The limited liability company shall commence the proceeding in the chancery court of the county where the limited liability company's registered office is located. If the limited liability company is a foreign limited liability company without a registered office in this state, it shall commence the proceeding



in the county in this state where the registered office of the domestic limited liability company merged with the foreign limited liability company was located at the time of the transaction.

(c) The limited liability company shall make all entitled persons whose demands remain unsettled, whether or not residents of this state, parties to the proceeding as in an action against their interests, and all parties must be served with a copy of the complaint. Nonresidents may be served as otherwise provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (11)(b) of this section is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them, or in any amendment to it. The entitled persons demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

(e) Each entitled person made a party to the proceeding is entitled to judgment: (i) for the amount, if any, by which the court finds the fair value of the entitled person's financial interests, plus interest at the legal rate, exceeds the amount paid by the limited liability company to the entitled person for such financial interests; or (ii) for the fair value, plus interest at the legal rate, of the entitled person's financial interests for which the limited liability company elected to withhold payment under subsection (9) of this section.

(12) **Court costs and counsel fees.** (a) The court in an appraisal proceeding commenced under subsection (11) of this section shall determine all costs of the proceeding including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the limited liability company, except that the court may assess costs against



all or some of the entitled persons demanding appraisal, in amounts the court finds equitable, to the extent the court finds such persons acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this subsection.

(b) The court in an appraisal proceeding may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(i) Against the limited liability company and in favor of any or all entitled persons demanding appraisal if the court finds the limited liability company did not substantially comply with the requirements of subsections (4), (6), (8) or (9) of this section; or

(ii) Against either the limited liability company or an entitled person demanding appraisal, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this subsection.

(c) If the court in an appraisal proceeding finds that the services of counsel for any entitled person were of substantial benefit to other persons similarly situated, and that the fees for those services should not be assessed against the limited liability company, the court may award to such counsel reasonable fees to be paid out of the amounts awarded the entitled persons who were benefited.

(d) To the extent the limited liability company fails to make a required payment pursuant to subsections (8), (9) or (10) of this section, the entitled person may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the limited liability company all costs and expenses of the suit, including counsel fees.

**Section 79-29-233. Action on an agreement to sell, lease, exchange or otherwise dispose of assets.** In the case of a limited liability company that is a party to an agreement outside the

ordinary course of the limited liability company's activities to sell, lease, exchange, or otherwise dispose of assets if the disposition would leave the limited liability company without a significant continuing business activity, as such term is defined in Section 79-29-231(3)(a)(ii):

(a) The agreement, referred to herein as the "asset sale agreement," must be approved by the members in accordance with subsection (c) of this section.

(b) Unless the asset sale agreement is not required to be approved by the members, the limited liability company must notify each member and each owner of a financial interest, whether or not entitled to vote, of the meeting of members at which the asset sale agreement is to be submitted for approval. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider the asset sale agreement and must contain or be accompanied by a copy or summary of the asset sale agreement.

(c) Approval of the asset sale agreement requires the approval of at least a majority of the votes entitled to be cast on the asset sale agreement, and, if any class or series of interests is entitled to vote as a separate group on the asset sale agreement, the approval of at least a majority of the votes entitled to be cast on the asset sale agreement by that voting group.

(d) Separate voting by voting groups is required:

(i) On an asset sale agreement, by each class or series of interests that would have a right to vote as a separate group on a provision in the asset sale agreement that, if contained in a proposed amendment to the certificate of formation or operating agreement, would require action by separate voting groups under the certificate of formation or operating agreement;

(ii) On an asset sale agreement, if the voting group is entitled under the certificate of formation or operating

agreement, to vote as a voting group to approve an asset sale agreement.

(e) If as a result of the asset disposition one or more members or owners of a financial interest would become subject to personal liability for the obligations or liabilities of any entity, approval of the asset sale agreement shall require the execution, by each such member and owner of a financial interest, of a separate written consent to become subject to personal liability.

### ARTICLE 3.

#### MEMBERS

**Section 79-29-301. Admission of members.** (1) A person becomes a member on the later of:

- (a) The formation of the limited liability company; or
- (b) The date stated in the records of the limited liability company as the date that person becomes a member.

(2) After the formation of the limited liability company, a person is admitted as a member of the limited liability company:

(a) In the case of a person who is not an assignee of a financial interest, including a person acquiring an interest directly from the limited liability company and a person to be admitted as a member of the limited liability company without acquiring a financial interest in the limited liability company at the time provided in and upon the compliance with the certificate of formation or the operating agreement or, if the certificate of formation or the operating agreement does not so provide, upon the written consent of all members. If the parties do not specify an agreed admission date in writing, the admission shall be deemed to have occurred upon the date of the compliance with the conditions set forth in this subsection; and

(b) In the case of an assignee of a financial interest, upon compliance with subsection (1) of Section 79-29-707. If the parties do not specify an agreed admission date in writing the



admission shall be deemed to have occurred upon the date of the compliance with the conditions set forth in subsection (1) of Section 79-29-707.

(c) In the case of a person being admitted as a member of a surviving limited liability company pursuant to a merger approved in accordance with Section 79-29-223 of this chapter, as provided in the operating agreement of the surviving limited liability company or in the agreement of merger, and in the event of any inconsistency, the terms of the agreement of merger shall control; and in the case of a person being admitted as a member of a limited liability company pursuant to a merger in which such limited liability company is not the surviving limited liability company in the merger, as provided in the operating agreement of such limited liability company.

(d) In the case of a person who inherits an interest in a limited liability company from a deceased member, upon the distribution of the interest from the estate of the deceased member to the person.

(e) In the case of a person who is the successor of a member that is an entity which has merged, upon the merger of the member.

(3) A person may be admitted to a limited liability company as a member of the limited liability company and may receive an interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company.

(4) A person may be admitted to a limited liability company as a member of the limited liability company without acquiring an interest in the limited liability company.

(5) A person may be admitted as the sole member of a limited liability company without making a contribution or being obligated to make a contribution to the limited liability company or without acquiring an interest in the limited liability company.

(6) A certificate of formation or written operating agreement may provide that a member or members shall have preemptive rights to subscribe to any additional issue of interests in a limited liability company.

**Section 79-29-303. Withdrawal of member and expulsion of member.** A member may withdraw from a limited liability company only at the time or upon the happening of events specified in a written operating agreement and in accordance with the written operating agreement or upon the written consent of all the members. Notwithstanding anything to the contrary under applicable law, unless the certificate of formation or a written operating agreement provides otherwise, a member may not withdraw from a limited liability company prior to the dissolution and winding-up of the limited liability company without the written consent of all of the members of the limited liability company. Unless otherwise provided by the certificate of formation or written operating agreement, a limited liability company has no power to expel a member. Except as otherwise provided by the certificate of formation or written operating agreement, a member who has withdrawn from or been expelled from a limited liability company ceases to be a member of the limited liability company and ceases to have any governance rights.

**Section 79-29-305. Management of limited liability company.** The management of a limited liability company shall be vested in its members in proportion to the then current percentage or other interest of members in the profits of the limited liability company owned by all of the members, the decision of members owning more than fifty percent (50%) of the said percentage or other interest in the profits controlling; provided however, that if an operating agreement provides for the management, in whole or in part, of a limited liability company by a manager or managers, the management of the limited liability company, to the extent so



provided, shall be vested in the manager or managers who shall be chosen in the manner provided in the operating agreement.

A member of a member-managed limited liability company has the power and authority to delegate to one or more other persons the member's rights and powers to manage and control the business and affairs of the limited liability company, including to delegate to agents, officers and employees of a member or the limited liability company and to delegate by agreement to other persons. The delegation shall not cause the member to cease to be a member of the limited liability company or cause the person to whom any such rights and powers have been delegated to be a member or manager, as the case may be, of the limited liability company.

**Section 79-29-307. Agency power of members, managers and officers.** (1) Except as provided in subsection (2) of this section, every member is an agent of the limited liability company for the purpose of conducting its business and affairs, and the act of any member, including, but not limited to, the execution in the name of the limited liability company of any instrument for apparently carrying on in the ordinary course the business or affairs of the limited liability company of which the person is a member, binds the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom the member is dealing has knowledge of the fact that the member has no such authority.

(2) If the certificate of formation or operating agreement provides that management of the limited liability company is vested in a manager or managers then except as otherwise provided in the certificate of formation or the operating agreement:

(a) No member, acting solely in the capacity as a member, is an agent of the limited liability company; and

(b) Every manager is an agent of the limited liability company for the purpose of its business and affairs, and the act



of any manager, including, but not limited to, the execution in the name of the limited liability company of any instrument for apparently carrying on in the ordinary course the business or affairs of the limited liability company of which the person is the manager, binds the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

(3) Every officer is an agent of the limited liability company for the purpose of its business and affairs to the extent the agency authority has been delegated to the officer as provided by the operating agreement, and the act of any officer, including, but not limited to, the execution in the name of the limited liability company of any instrument for apparently carrying on in the ordinary course the business or affairs of the limited liability company of which the person is an officer, binds the limited liability company, unless the officer so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom the officer is dealing has knowledge of the fact that the officer has no such authority.

(4) No act of a manager, member or officer in contravention of a restriction on authority shall bind the limited liability company to persons having knowledge of the restriction.

**Section 79-29-309. Voting, classes and meetings.** (1) With respect to any matter to be voted on, consented to or approved by the members, or any action required or permitted to be taken by the members the vote of each member shall be based on the then current percentage held by such member in the profits of the limited liability company owned by all the members.

(2) Unless a greater percentage is expressly required by another section of this chapter, with respect to any matter to be voted on, consented to or approved by the members or any action

required or permitted to be taken by the members, the decision of members of a limited liability company owning more than fifty percent (50%) of the said percentage in the profits as described in subsection (1) of this section is controlling.

(3) A certificate of formation or operating agreement may provide for classes or groups of members having such relative rights, powers and duties as may be provided therein, and may make provision for the future creation in the manner provided therein of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members. A certificate of formation or written operating agreement may provide that any member or class or group of members shall have no voting rights.

(4) The certificate of formation or operating agreement may grant to all or certain identified members or a specified class or group of the members the right to vote (on any basis) separately or with all or any class or group of the members, on any matter.

(5) A certificate of formation or operating agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(6) (a) Meetings of members may be held by means of telephone or other communications equipment by means of which all persons participating in the meeting can speak to and hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting;

(b) On any matter that is to be voted on, consented to or approved by members, or any action required or permitted to be taken by the members the members may take such action without a



meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the members owning at least the percent of the interests which would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted. If any action of the members is proposed to be taken pursuant to this subsection without the written consent of all of the members, the members who did not sign the written consent shall be provided with notice of the executed consent within twenty (20) days of the execution of the written consent. The execution of a written consent by any member shall constitute a waiver by such member of notice thereof.

(c) On any matter that is to be voted on by members, the members may vote in person or by proxy, and the proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law.

(d) If a meeting of members has not been held during the immediately preceding fifteen (15) months, a member or members owning twenty percent (20%) or more of the voting power of all members entitled to vote may call a regular meeting of members by giving thirty (30) days' written notice to the members, all at the expense of the limited liability company.

**Section 79-29-311. Liability to third parties.** (1) Except as otherwise provided by this chapter, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company, and no member, manager or officer of a limited liability company shall be obligated personally for any such debt, obligation or liability of the limited liability company solely by reason of being a member, acting as a manager or acting as an officer of the limited liability company.



(2) A member, manager or officer of a limited liability company is not a proper party to a proceeding by or against a limited liability company, by reason of being a member, manager or officer, as applicable, of the limited liability company, except:

(a) Where the object of the proceeding is to enforce a member's, manager's or officer's right against or liability to the limited liability company; or

(b) In a derivative action brought pursuant to Article 11 of this chapter.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, under an operating agreement or under another agreement, a member, manager or officer may agree to be obligated personally for any or all of the debts, obligations and liabilities of the limited liability company.

**Section 79-29-313. Events of bankruptcy.** (1) The certificate of formation or the written operating agreement may provide for events the occurrence of which result in a member either (a) ceasing to have some or all governance rights; (b) ceasing to have some or all financial rights; or (c) ceasing to be a member.

(2) A person who has ceased to be a member shall continue to have any financial rights that the person had at the time of the event but shall cease to have any governance rights or any other rights.

(3) Unless otherwise provided in the certificate of formation or written operating agreement or with the written consent of all members, a member ceases to be a member upon the happening of the following events:

(a) A member: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for the person any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar

relief under any statute, law or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of the nature described in this subsection (3)(a); or (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of the member's properties; or

(b) If one hundred twenty (120) days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or if within ninety (90) days after the appointment without the member's consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of the member's properties, the appointment is not vacated or stayed or within ninety (90) days after the expiration of any stay, the appointment is not vacated.

**Section 79-29-315. Access to and confidentiality of information; records.** (1) Each member of a limited liability company has the right, subject to such reasonable standards, including standards governing what information and documents are to be furnished at what time and location and at whose expense, as may be set forth in an operating agreement or otherwise established by the manager or, if there is no manager, then by the members, to obtain from the limited liability company from time to time upon reasonable demand for any good faith purpose reasonably related to the member's interest as a member of the limited liability company:

(a) True, full and current information regarding the status of the business and financial condition of the limited liability company;

(b) Promptly after becoming available, a copy of the limited liability company's federal, state and local income tax returns for each year;

(c) A current list of the name and last known business, residence or mailing address of each member and manager;

(d) A copy of any written operating agreement and certificate of formation and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the operating agreement and any certificate and all amendments thereto have been executed;

(e) True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future, and the date on which each became a member; and

(f) Other information regarding the affairs of the limited liability company as is just and reasonable.

(2) Each manager shall have the right to examine all of the information described in subsection (1) of this section for a good faith purpose reasonably related to the position of manager.

(3) The manager or members of a limited liability company, referred to herein as the "authority," shall have the right to keep confidential from the members and managers, for a period of time as the authority deems reasonable, any information which the authority reasonably believes to be in the nature of trade secrets or other information the disclosure of which the authority in good faith believes is not in the best interest of the limited liability company or could damage the limited liability company or its business or which the limited liability company is required by law or by agreement with a third party to keep confidential.

(4) A limited liability company may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.



(5) Any demand under this section shall be in writing and shall state the purpose of such demand with reasonable detail.

(6) Any action to enforce any right arising under this section shall be brought in the chancery court of the county where the limited liability company's principal office is located. If the limited liability company refuses to permit a member to obtain or a manager to examine the information described in subsection (1) of this section or does not reply to the demand that has been made within five (5) business days after the demand has been made, the demanding member or manager may apply to the chancery court for an order to compel the disclosure. The chancery court is hereby vested with exclusive jurisdiction to determine whether the person seeking the information is entitled to the information sought. The court may summarily order the limited liability company to permit the demanding member to obtain or manager to examine the information described in subsection (1) of this section and to make copies or abstracts therefrom, or the court may summarily order the limited liability company to furnish to the demanding member or manager the information described in subsection (1) of this section on the condition that the demanding member or manager first pay to the limited liability company the reasonable cost of obtaining and furnishing the information and on such other conditions as the court of chancery deems appropriate. When a demanding member seeks to obtain or a manager seeks to examine the information described in subsection (1) of this section, the demanding member or manager shall first establish (a) that the demanding member or manager has complied with the provisions of this section respecting the form and manner of making demand for obtaining or examining of the information, and (b) that the information the demanding member or manager seeks is reasonably related to the member's interest as a member or the manager's position as a manager, as the case may be. The court may, in its discretion, prescribe any limitations or conditions

with reference to the obtaining or examining of information, or award such other or further relief as the chancery court may deem just and proper. The court may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within the state and kept in the state upon such terms and conditions as the order may prescribe.

(7) The rights of a member or manager to obtain information as provided in this section may be restricted in the initial operating agreement or in any subsequent amendment approved or adopted by all of the members or in compliance with any applicable requirements of the operating agreement. The provisions of this subsection shall not be construed to limit the ability to impose restrictions on the rights of a member or manager to obtain information by any other means permitted under this section.

#### ARTICLE 4.

##### MANAGEMENT

**Section 79-29-401. Management of a limited liability company by a manager or managers.** (1) The certificate of formation or the operating agreement may delegate responsibility for managing a limited liability company to or among one or more managers to the extent provided therein. Managers may also serve as officers to the extent provided in the operating agreement.

(2) Managers need not be residents of this state or members of the limited liability company. The certificate of formation or the operating agreement may prescribe other qualifications for managers.

(3) The number of managers shall be fixed by or in the manner provided in the certificate of formation or the operating agreement. The number of managers may be increased or decreased by amendment to, or in the manner provided in, the certificate of formation or the operating agreement.

(4) Managers shall be elected by the members.



(5) Any vacancy occurring in the office of manager shall be filled by the vote of the members

(6) All managers or any lesser number may be removed in the manner provided in the certificate of formation or the operating agreement. All managers or any lesser number may be removed with or without cause by the vote of the members required to elect such manager or managers.

(7) Any action required or permitted to be taken by the managers of a limited liability company may be taken upon a majority vote of the managers.

(8) An operating agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(9) Meetings of managers may be held by means of telephone or other communications equipment by means of which all persons participating in the meeting can speak to and hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting.

(10) The managers may take action on any matter that is to be voted on, consented to or approved by managers without a meeting, and without a vote with not less than one (1) but not more than ten (10) days' prior notice to all the managers if a consent or consents in writing, setting forth the action so taken, shall be signed by the managers having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all managers entitled to vote thereon were present and voted.

**Section 79-29-403. Reliance on reports and information.** A member, manager, officer or liquidating trustee of a limited



liability company shall be fully protected in relying in good faith upon:

(a) The records of the limited liability company; and upon

(b) Information, opinions, reports or statements, including, information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the limited liability company, or the value and amount of assets, reserves, contracts, agreements or other undertakings that would be sufficient to pay claims and obligations of the limited liability company or to make reasonable provision to pay such claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions might properly be paid which are presented by:

(i) Another manager of the limited liability company;

(ii) A member of the limited liability company;

(iii) A liquidating trustee of the limited liability company;

(iv) An officer of the limited liability company;

(v) An employee of the limited liability company;

(vi) Committees of the limited liability company, members or managers; or

(vii) Any other person as to matters the member, manager, officer or liquidating trustee reasonably believes is within such other person's professional or expert competence.

**Section 79-29-405. Delegation of rights and powers to manage.** (1) The manager of a limited liability company has the power and authority to delegate to one or more other persons the manager's rights and powers to manage and control the business and affairs of the limited liability company, including to delegate to agents, officers and employees of: (a) a member, (b) a manager or (c) the limited liability company, and to delegate by a management

agreement or another agreement with, or otherwise to, other persons.

(2) Such delegation as provided in subsection (1) of this section shall not cause the manager to cease to be a manager of the limited liability company or cause the person to whom any such rights and powers have been delegated to be a manager of the limited liability company.

**Section 79-29-407. Resignation of manager.** An operating agreement may provide that a manager may resign as a manager of a limited liability company at the time or upon the happening of events specified in an operating agreement and in accordance with the operating agreement. An operating agreement may provide that a manager shall not have the right to resign as a manager of a limited liability company. A manager may resign as a manager of a limited liability company at any time by giving written notice to the members and other managers. If the resignation of a manager violates an operating agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning manager damages for breach of the operating agreement and offset the damages against the amount otherwise payable to the resigning manager.

## ARTICLE 5.

### FINANCE

**Section 79-29-501. Form of contribution.** The contribution of a member may be in cash, property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

**Section 79-29-503. Liability for contributions.** (1) A promise by a member to contribute to the limited liability company is not enforceable unless set out in a writing signed by the member.

(2) A member is obligated to the limited liability company to perform an enforceable promise to contribute cash or property

or to perform services, even if the member is unable to perform because of death, disability or any other reason. If a member does not make the required contribution of property or services, the member is obligated at the option of the limited liability company to contribute cash equal to that portion of the value of the stated contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against the member under the operating agreement or applicable law.

(3) The obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by specific consent of all the members. However, a creditor of a limited liability company who extends credit, or otherwise acts in reliance on that obligation after the member signs a writing that reflects the obligation and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation to the same extent as the limited liability company could pursuant to this section. A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company prior to the time the call occurs.

(4) A certificate of formation or operating agreement may provide that the interest of any member who fails to make any contribution that the member is obligated to make, shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing the defaulting member's proportionate financial or governance interest in the limited liability company,



subordinating the defaulting member's financial or governance interests to that of nondefaulting members, forcing a sale of the defaulting member's financial or governance interest, forfeiting the defaulting member's financial or governance interest, the lending by other members of the amount necessary to meet the defaulting member's commitment, fixing the value of the defaulting member's financial or governance interest by appraisal or by formula and redeeming or selling of the defaulting member's financial or governance interest at such value, or other penalty or consequence.

**Section 79-29-505. Sharing of profits and losses.** The profits and losses of a limited liability company shall be allocated among the members who own financial interests and other owners of financial interests, and among groups or classes of members, in the manner provided in the certificate of formation or operating agreement. Profits and losses must be allocated on the basis of the agreed value, as stated in the limited liability company records required to be kept pursuant to Section 79-29-115, of the contributions made by each owner of a financial interest to the extent they have been received by the limited liability company and have not been returned.

**Section 79-29-507. Sharing of distributions.** Distributions of cash or other assets of a limited liability company must be allocated among the members who own financial interests and other owners of financial interests, and among classes or groups of members, in the manner provided in the certificate of formation or operating agreement. Distributions must be made on the basis of the agreed value, as stated in the limited liability company records required to be kept pursuant to Section 79-29-115, of the contributions made by each member who owns a financial interest to the extent they have been received by the limited liability company and have not been returned.

**Section 79-29-509. Defense of usury not available.** No obligation of a member, manager or officer of a limited liability company to the limited liability company arising under the operating agreement or a separate agreement or writing, and no note, instrument or other writing evidencing any such obligation of a member, manager or officer, shall be subject to the defense of usury, and no member, manager or officer shall interpose the defense of usury with respect to any such obligation in any action.

#### ARTICLE 6.

#### DISTRIBUTIONS

**Section 79-29-601. Distributions generally and interim distributions.** For purposes of this article, except for Section 79-29-611(1) which shall apply to any member, any reference to a member of a limited liability company in this article shall mean a member who owns a financial interest and shall not mean a member who does not own a financial interest or hold a financial right in the limited liability company.

Except as provided in this article, to the extent specified in the certificate of formation or the operating agreement and at the times or upon the occurrence of the events specified in the certificate of formation or operating agreement, a member is entitled to receive from a limited liability company distributions before the member's withdrawal from the limited liability company and before the dissolution and winding-up thereof.

**Section 79-29-603. Distribution upon withdrawal of member.** Except as provided in this article, upon withdrawal any withdrawing member is entitled to receive any distribution to which the member is entitled under an operating agreement and, if not otherwise provided in an operating agreement, the member is entitled to receive, within a reasonable time after withdrawal the fair value of the member's financial interest as of the date of



withdrawal based upon the member's right to share in distributions from the limited liability company.

For purposes of this section the fair value of the member's financial interest shall be determined as of the date of withdrawal:

(a) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(b) Without discounting for lack of marketability or minority status.

The distribution must be accompanied by current financial statements of the limited liability company.

**Section 79-29-605. Distribution in kind.** A member, regardless of the nature of the person's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. A member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed to the person exceeds a percentage of that asset which is equal to the percentage in which the person shares in distributions from the limited liability company. Except as provided in the operating agreement, a member may be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed is equal to a percentage of that asset which is equal to the percentage in which the member shares in distributions from the limited liability company.

**Section 79-29-607. Right to distribution.** Subject to Sections 79-29-609 and 79-29-813, at the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution. An operating agreement may provide for the establishment of a record



date with respect to allocations and distributions by a limited liability company.

**Section 79-29-609. Limitations on distribution.** (1) No distribution may be made if, after giving effect to the distribution:

(a) The limited liability company would not be able to pay its debts as they become due in the usual course of business; or

(b) The limited liability company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other members upon dissolution which are superior to the rights of the member receiving the distribution.

For purposes of this section, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

(2) The limited liability company may base a determination that a distribution is not prohibited under subsection (1) of this section either on:

(a) Financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances; or

(b) A fair valuation or other method that is reasonable under the circumstances.

(3) The effect of a distribution under subsection (1) of this section is measured as of: (a) the date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization; or (b) the date payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

**Section 79-29-611. Liability for wrongful distribution. (1)**

A member or manager who votes for or assents to a distribution in violation of the certificate of formation or operating agreement or Section 79-29-609 is personally liable to the limited liability company for the amount of the distribution that exceeds what could have been distributed without violating Section 79-29-609 or the certificate of formation or operating agreement if it is established that the member or manager did not act in compliance with Section 79-29-609. Each member or manager held liable under this subsection (1) is entitled to contribution:

(a) From each other member or manager who could be held liable under this subsection (1) for the unlawful distribution; and

(b) From each member for the amount the member received knowing that the distribution was made in violation of Section 79-29-605, the certificate of formation or the operating agreement.

(2) (a) A member who receives a distribution in violation of Section 79-29-609, and who knew at the time of the distribution that the distribution violated Section 79-29-609, shall be liable to a limited liability company for the amount of the distribution.

(b) A member who receives a distribution in violation of Section 79-29-609, and who did not know at the time of the distribution that the distribution violated Section 79-29-609, shall not be liable for the amount of the distribution.

(3) Subject to subsection (4) of this section, this section shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

(4) Unless otherwise agreed, a member who either assents to or receives a distribution from a limited liability company shall have no liability under this chapter or other applicable law for the amount of the distribution after the expiration of two (2)

years from the date of the distribution unless an action to recover the distribution from the member is commenced before the expiration of the two-year period and an adjudication of liability against the member is made in the action.

#### ARTICLE 7.

##### ASSIGNMENT OF FINANCIAL INTERESTS

**Section 79-29-701. Nature of financial interest in a limited liability company.** A financial interest in a limited liability company is intangible personal property. A member has no interest in specific limited liability company property.

**Section 79-29-703. Assignment of financial interest in a limited liability company.** (1) A financial interest is assignable, in whole or in part. The assignee of a member's financial interest shall have no right to participate in the management of the business and affairs of a limited liability company except as provided in an operating agreement and upon:

(a) The approval of all of the members of the limited liability company other than the member assigning the financial interest; or

(b) Compliance with any procedure provided for in the operating agreement.

(2) (a) An assignment of a financial interest does not dissolve a limited liability company or entitle the assignee to become or to exercise any rights or powers of a member;

(b) An assignment of a financial interest entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and

(c) A member ceases to be a member, ceases to hold a governance interest, and ceases to have the power to exercise any rights or powers of a member upon assignment of all of the member's financial interest. The pledge of, or granting of, a



security interest, lien or other encumbrance in or against, any or all of the financial interest of a member shall not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member.

(3) A member's interest in a limited liability company may be evidenced by a certificate issued by the limited liability company. An operating agreement may provide for the assignment or transfer of any interest represented by such a certificate and make other provisions with respect to the certificates. A limited liability company shall not have the power to issue a certificate of an interest in a limited liability company in bearer form.

(4) Except to the extent assumed by written agreement until an assignee of a financial interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.

(5) A limited liability company may acquire, by purchase, redemption or otherwise, any interest in the limited liability company. Any such interest so acquired by the limited liability company shall be deemed canceled.

**Section 79-29-705. Rights of creditor.** (1) On application to a court of competent jurisdiction by a judgment creditor of a member, referred to in this section as the "judgment debtor," the court may charge the financial interest of the judgment debtor with payment of the unsatisfied amount of the judgment, with interest (referred to in this section as a "charging order"). To the extent so charged, the judgment creditor has only the rights of an assignee of the financial interest, however, the judgment creditor shall have no rights to bring a proceeding under Article 11 of this chapter. This article does not deprive any judgment debtor of the benefit of any exemption laws applicable to the judgment debtor's financial interest.

(2) A charging order constitutes a lien on the judgment debtor's financial interest.

(3) The entry of a charging order is the exclusive remedy by which a judgment creditor of a judgment debtor or its assignee may satisfy a judgment out of the judgment debtor's financial interest.

(4) No creditor of a judgment debtor or its assignee shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company.

(5) The chancery court shall have jurisdiction to hear and determine any matter relating to any such charging order.

**Section 79-29-707. Right of assignee to become a member.**

(1) An assignee of a financial interest may become a member with governance interests if and to the extent that: (a) the certificate of formation or operating agreement so provides; (b) all other members consent; or (c) in the case of an assignee of a member's entire financial interest in which, immediately following the assignment, the limited liability company otherwise would have no members, simultaneously with and upon the assignment of the interest to an assignee who agrees to become a member.

(2) An assignee who has become a member has, to the extent assigned, the governance rights and powers, and is subject to the restrictions and liabilities, of a member under the certificate of formation or operating agreement and this chapter. An assignee who becomes a member also is liable for the obligations of the assignee's assignor to make and return contributions as provided in Articles 5 and 6 of this chapter. However, the assignee is not obligated for liabilities or obligations unknown to the assignee at the time the assignee became a member and which could not be ascertained from the certificate of formation or the operating agreement.

(3) Whether or not an assignee of a financial interest becomes a member, the assignor is not released from the assignor's



liability to the limited liability company under Articles 5 and 6 of this chapter.

**Section 79-29-709. Powers of personal representative of deceased, incompetent or dissolved member.** (1) If a court of competent jurisdiction adjudges a member to be incompetent, the member's personal representative may exercise all rights until such time that the member's competency is regained, including the member's governance rights, on behalf of the member and any power under an operating agreement of an assignee to become a member.

(2) If a member who is an individual dies, a personal representative of the member's estate may exercise all rights for the purpose of settling the estate, including the governance rights that were held by such member at the time of the member's death and any power under an operating agreement of an assignee to become a member.

(3) If a member is a corporation, trust or other entity and such entity is dissolved, terminated or liquidated, the personal representative of the entity may exercise all rights and powers of that member until a successor is established, including the member's governance rights.

**Section 79-29-711. Enforceability of limitations on assignments of financial interests.** Sections 75-9-406 and 75-9-408 do not apply to a member's financial interest in a domestic limited liability company, including the rights, powers and interests arising under the limited liability company's certificate of formation or operating agreement or under this chapter. To the extent of any conflict or inconsistency between this section and Sections 75-9-406 and 75-9-408, this section prevails. It is the express intent of this section to permit the enforcement, as an agreement among the members of a limited liability company, of any provision of an operating agreement that would otherwise be ineffective under Sections 75-9-406 and 75-9-408.



ARTICLE 8.

DISSOLUTION

**Section 79-29-801. Nonjudicial dissolution.** (1) A limited liability company is dissolved and its affairs must be wound up upon the first of the following to occur:

- (a) At the time specified in the certificate of formation;
- (b) Upon the occurrence of the event specified in the certificate of formation or the written operating agreement;
- (c) Upon the consent of all members, or such lesser number as may be provided in the certificate of formation or operating agreement;
- (d) At any time there are no members; provided, that the limited liability company is not dissolved and is not required to be wound up if:
  - (i) Within one hundred eighty (180) days or such other period as is provided for in the certificate of formation or operating agreement after the occurrence of the event that terminated the continued membership of the last remaining member, the personal representative of the last remaining member agrees in writing to continue the limited liability company and to the admission of the personal representative of the member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; however an operating agreement may provide that the personal representative of the last remaining member shall be obligated to agree in writing to continue the limited liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; or

(ii) A member is admitted to the limited liability company in the manner provided in the operating agreement, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, within one hundred eighty (180) days or such other period as is provided in the operating agreement after the occurrence of the event that terminated the continued membership of the last remaining member, pursuant to a provision of the operating agreement that specifically provides for the admission of a member to the limited liability company after there is no longer a remaining member of the limited liability company.

(e) Upon the entry of a decree of judicial dissolution under Section 79-29-803.

(2) The following events with respect to any member shall not cause the limited liability company to be dissolved or its affairs to be wound up, and upon the occurrence of any such event, the limited liability company shall be continued without dissolution:

- (a) Death;
- (b) Withdrawal;
- (c) Expulsion;
- (d) Bankruptcy;
- (e) Dissolution; or

(f) The occurrence of any other event that terminates the continued membership of any member.

**Section 79-29-803. Judicial dissolution.** (1) On application by or for a member, the chancery court for the county in which the registered office of the limited liability company is located may decree dissolution of a limited liability company:

(a) Whenever it is not reasonably practicable to carry on the business in conformity with the certificate of formation or the operating agreement;

(b) Whenever the managers or the members in control of the limited liability company have been guilty of or have knowingly countenanced persistent and pervasive fraud or abuse of authority, or the property of the limited liability company is being misapplied or wasted by such persons; or

(c) In a proceeding by the limited liability company to have its voluntary dissolution continued under court supervision.

(2) If a limited liability company has no members due to the expulsion or withdrawal of the last remaining member pursuant to the terms of the certificate of formation or the written operating agreement and the certificate of formation or the written operating agreement of the limited liability company prohibits the substitution of a member, then an officer, manager or any assignee or owner of a financial interest of the limited liability company or the personal representative of the member may apply to the chancery court to dissolve the limited liability company; provided however, that if there are no persons that hold the above described positions, then any creditor of the limited liability company or the Secretary of State may apply to the chancery court to dissolve the limited liability company.

(3) A court in a judicial proceeding brought to dissolve a limited liability company may appoint one or more receivers to wind-up and liquidate, or one or more custodians to manage, the business and affairs of the limited liability company. The court appointing a receiver or custodian has jurisdiction over the limited liability company and all its property wherever located. The court may appoint an individual or entity (authorized to transact business in this state) as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:



(a) The receiver (i) may dispose of all or any part of the assets of the limited liability company wherever located, at a public or private sale, if authorized by the court; and (ii) may sue and defend in the receiver's own name as receiver of the limited liability company in all courts of this state; and

(b) The custodian may exercise all the powers of the limited liability company, through or in place of its members, managers or officers, to the extent necessary to manage the affairs of the limited liability company in the best interests of its members and creditors.

The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the limited liability company, its members and creditors.

The court from time to time during the receivership or custodianship may order compensation paid and expenses paid or reimbursed to the receiver or custodian from the assets of the limited liability company or proceeds from the sale of the assets.

**Section 79-29-805. Decree; winding-up, liquidation, notification.** (1) If after a hearing the court determines that one or more grounds for judicial dissolution exist, it may enter a decree dissolving the limited liability company and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State who shall file it.

(2) After entering the decree of dissolution, the court shall direct the winding-up and liquidation of the limited liability company's business and affairs in accordance with Section 79-29-809 and the notification of claimants in accordance with Sections 79-29-817 and 79-29-819.

(3) Nothing contained in this section shall diminish the inherent equity powers of the court to fashion alternative remedies to judicial dissolution.

**Section 79-29-807. Safekeeping by State Treasurer.** Assets of a dissolved limited liability company that should be transferred to a creditor, claimant or member of the limited liability company who cannot be found shall be reduced to cash and deposited with the State Treasurer for safekeeping. When the creditor, claimant or member furnishes satisfactory proof of entitlement to the amount deposited, the State Treasurer shall pay such person or the person's personal representative that amount.

**Section 79-29-809. Winding-up.** (1) A manager who has not wrongfully dissolved a limited liability company or, if none, the members or a person approved by the members or, if there is more than one (1) class or group of members, then by each class or group of members, in either case, by members who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the limited liability company owned by all of the members or by the members in each class or group, as appropriate, may wind-up the limited liability company's affairs; but the chancery court upon cause shown, may wind-up the limited liability company's affairs upon application of any member or manager, the member's or manager's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee.

(2) Upon dissolution of a limited liability company, the persons winding-up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge or make reasonable provision for the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company, all without affecting the liability of members and managers and without imposing liability on a liquidating trustee.



**Section 79-29-811. Agency power of managers, officers or members after dissolution.** (1) Except as provided in subsections (3), (4) and (5) of this section, after an event causing dissolution of the limited liability company, any member can bind the limited liability company:

(a) By any act appropriate for winding-up the limited liability company's affairs or completing transactions unfinished at dissolution; and

(b) By any transaction that would have bound the limited liability company if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

(2) The filing of the certificate of dissolution shall be presumed to constitute notice of dissolution for purposes of subsection (1)(b) of this section.

(3) An act of a manager, officer or member which is not binding on the limited liability company pursuant to subsection (1) of this section is binding if it is otherwise authorized by the limited liability company.

(4) An act of a manager, officer or member which would be binding under subsection (1) or would be otherwise authorized but which is in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

(5) If the certificate of formation or the operating agreement vests management of the limited liability company in a manager or managers, the manager or managers shall have the authority of a member provided for in subsection (1) of this section, and no member shall have such authority if the member is acting solely in the capacity of a member.

**Section 79-29-813. Distribution of assets.** (1) Upon the winding-up of a limited liability company, the assets shall be distributed as follows:



(a) To creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company, whether by payment or the making of reasonable provision for payment thereof, other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members and former members under Section 79-29-601 or Section 79-29-603;

(b) To members and former members in satisfaction of liabilities for distributions under Section 79-29-601 or Section 79-29-603, and

(c) To members first for the return of their contributions and second respecting their financial interests, in the proportions in which the members share in distributions.

(2) A limited liability company which has dissolved:

(a) Shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured contractual claims, known to the limited liability company;

(b) Shall make such provision as will be reasonably likely to be sufficient to provide compensation for any claim against the limited liability company which is the subject of a pending action, suit or proceeding to which the limited liability company is a party; and

(c) Shall make such provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the limited liability company or that have not arisen but that, based on facts known to the limited liability company, are likely to arise or to become known to the limited liability company within three (3) years after the date of dissolution.

If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made

shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of assets available therefor. Any remaining assets shall be distributed as provided in this chapter. Any liquidating trustee winding-up a limited liability company's affairs who has complied with this section shall not be personally liable to the claimants of the dissolved limited liability company by reason of such person's actions in winding-up the limited liability company.

(3) A member who receives a distribution in violation of subsection (1) of this section, and who knew at the time of the distribution that the distribution violated subsection (1) of this section, shall be liable to the limited liability company for the amount of the distribution. For purposes of the immediately preceding sentence, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A member who receives a distribution in violation of subsection (1) of this section, and who did not know at the time of the distribution that the distribution violated subsection (1) of this section, shall not be liable for the amount of the distribution. Subject to subsection (4) of this section, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

(4) Unless otherwise agreed, a member who receives a distribution from a limited liability company to which this section applies shall have no liability under this chapter or other applicable law for the amount of the distribution after the expiration of two (2) years from the date of the distribution unless an action to recover the distribution from such member is commenced prior to the expiration of the said two-year period and



an adjudication of liability against such member is made in the said action.

(5) Section 79-29-609 shall not apply to a distribution to which this section applies.

**Section 79-29-815. Trustees or receivers for limited liability companies; appointment; powers; duties.** When the certificate of formation of any limited liability company formed under this chapter shall be dissolved by the filing of a certificate of dissolution, the chancery court, on application of any creditor, member or manager of the limited liability company, or any other person who shows good cause therefor, at any time, may either appoint one or more of the managers of the limited liability company to be trustees, or appoint one or more persons to be receivers, of and for the limited liability company, to take charge of the limited liability company's property, and to collect the debts and property due and belonging to the limited liability company, with the power to prosecute and defend, in the name of the limited liability company, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by the limited liability company, if in being, that may be necessary for the final settlement of the unfinished business of the limited liability company. The powers of the trustees or receivers may be continued as long as the chancery court shall think necessary for the purposes aforesaid.

**Section 79-29-817. Known claims against dissolved limited liability company.** (1) A dissolved limited liability company may dispose of the known claims against it by filing a certificate of dissolution pursuant to Section 79-29-205 and following the procedure described in this section.

(2) The dissolved limited liability company shall notify its known claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice must:



(a) Describe information that must be included in a claim;

(b) Provide a mailing address where a claim may be sent;

(c) State the deadline, which may not be fewer than one hundred twenty (120) days from the latter of the mailing date of the written notice or the filing of a certificate of dissolution pursuant to Section 79-29-205, by which the dissolved limited liability company must receive the claim; and

(d) State that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved limited liability company is barred:

(a) If a claimant who was given written notice under subsection (2) of this section does not deliver the claim to the dissolved limited liability company by the deadline; or

(b) If a claimant whose claim was rejected by the dissolved limited liability company does not commence a proceeding to enforce the claim within ninety (90) days from the date the claimant receives notice of the rejection of the claim.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

**Section 79-29-819. Unknown claims against dissolved limited liability company.** (1) A dissolved limited liability company may publish notice of its dissolution pursuant to this section which requests that persons with claims against the limited liability company present them in accordance with the notice.

(2) The notice must:

(a) Be published one (1) time in a newspaper of general circulation in the county where the dissolved limited liability company's principal office, or, if none in this state, its registered office, is or was last located;

(b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(c) State that a claim against the limited liability company not otherwise barred will be barred unless a proceeding to enforce the claim is commenced within three (3) years after the latter of the publication of the notice or the filing of a certificate of dissolution with respect to the limited liability company

(3) If the dissolved limited liability company publishes a newspaper notice in accordance with subsection (2) and files a certificate of dissolution pursuant to Section 79-29-205, the claim of each of the following claimants which is not otherwise barred is barred unless the claimant commences a proceeding to enforce the claim against the dissolved limited liability company within three (3) years after the latter of the publication date of the newspaper notice or the filing of the certificate of dissolution:

(a) A claimant who did not receive written notice under Section 79-29-817;

(b) A claimant whose claim was timely sent to the dissolved limited liability company but not acted on within the three-year period; and

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim may be enforced under this section:

(a) Against the dissolved limited liability company, to the extent of its undistributed assets; or

(b) If the assets have been distributed in liquidation, against a member of the dissolved limited liability company to the extent of the member's pro rata share of the claim or the assets of the limited liability company distributed to the member in liquidation, whichever is less, but a member's total liability for

all claims under this section may not exceed the total amount of assets distributed to the member, subject to Section 79-29-611(1).

**Section 79-29-821. Grounds for administrative dissolution.**

The Secretary of State may commence a proceeding under Section 79-29-823 to administratively dissolve a limited liability company if:

(a) The limited liability company does not pay within sixty (60) days after they are due any fees imposed by this chapter or other law;

(b) The limited liability company does not deliver its annual report to the Secretary of State within sixty (60) days after it is due;

(c) The limited liability company is without a registered agent in this state for sixty (60) days or more;

(d) The limited liability company does not notify the Secretary of State within sixty (60) days that its registered agent has been changed or that its registered agent has resigned; or

(e) The Department of Revenue notifies the Secretary of State that the limited liability company is delinquent in any payments or tax owed by the limited liability company to the State of Mississippi; or

(f) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the limited liability company to the Secretary of State pursuant to this chapter.

**Section 79-29-823. Procedure for administrative dissolution.**

(1) If the Secretary of State determines that one or more grounds exist under Section 79-29-821 for administratively dissolving a limited liability company, the Secretary of State shall serve the limited liability company with written notice of the determination under Section 79-29-125, except that such determination may be served by first class mail.



(2) If the limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after the service of the notice, the Secretary of State shall administratively dissolve the limited liability company by signing a certification of the administrative dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate of administrative dissolution and serve the limited liability company with a copy of the certificate of administrative dissolution under Section 79-29-125, except that such certificate of administrative dissolution may be served by first class mail.

**Section 79-29-825. Reinstatement following administrative dissolution.** (1) A limited liability company administratively dissolved under Section 79-29-823 may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The application must:

(a) Recite the name of the limited liability company and the effective date of its administrative dissolution;

(b) State that the ground or grounds for administrative dissolution either did not exist or have been eliminated; and

(c) State that the limited liability company's name satisfies the requirements of Section 79-29-109.

(2) If the Secretary of State determines that the application contains the information required by subsection (1) of this section and that the information is correct, the Secretary of State shall cancel the certificate of administrative dissolution and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate of reinstatement, and serve the limited liability company with a copy of the certificate of

reinstatement under Section 79-29-125. except that such certificate of reinstatement may be served by first class mail.

(3) When the reinstatement is effective:

(a) The reinstatement relates back to and takes effect as of the effective date of the administrative dissolution;

(b) Any liability incurred by the limited liability company or a member after the administrative dissolution and before the reinstatement shall be determined as if the administrative dissolution had never occurred; and

(c) The limited liability company may resume carrying on its business as if the administrative dissolution had never occurred.

**Section 79-29-827. Appeal from denial of reinstatement. (1)**

If the Secretary of State denies a limited liability company's application for reinstatement following administrative dissolution, the Secretary of State shall serve the limited liability company under Section 79-29-125 with a record that explains the reason or reasons for denial, except that such record may be served by first class mail.

(2) The limited liability company may appeal the denial of reinstatement to the Chancery Court of the First Judicial District of Hinds County, Mississippi, or the chancery court where the limited liability company is domiciled within thirty (30) days after service of the notice of denial is perfected. The limited liability company appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of administrative dissolution, the limited liability company's application for reinstatement, and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the dissolved limited liability company or may take other action the court considers appropriate.



(4) The court's final decision may be appealed as in other civil proceedings.

**Section 79-29-829. Revocation of dissolution.**

Notwithstanding the occurrence of an event set forth in Section 79-29-801(1)(a), (b), (c) or (d) of this chapter, the limited liability company shall not be dissolved and its affairs shall not be wound up if, within one hundred twenty (120) days of the effective date of the dissolution:

(a) The limited liability company is continued pursuant to the affirmative majority vote or consent of all remaining members of the limited liability company or the personal representative of the last remaining member of the limited liability company if there is no remaining member, and any other person whose approval is required under the operating agreement to revoke a dissolution pursuant to this section, and; however, if the dissolution was caused by a vote or consent, the dissolution shall not be revoked unless each member and other person, or their respective personal representatives, who voted in favor of, or consented to, the dissolution has voted or consented to continue the limited liability company. If there is no remaining member of the limited liability company and the personal representative of the last remaining member votes in favor of or consents to the continuation of the limited liability company, the personal representative shall be required to agree in writing to the admission of the personal representative of the member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; and

(b) The limited liability company delivers to the Secretary of State for filing a certificate of revocation of dissolution, together with a copy of certificate of dissolution, that sets forth:

(i) The name of the limited liability company;



(ii) The effective date of the dissolution that was revoked; and

(iii) The date that the revocation of dissolution was authorized.

(c) The revocation of dissolution is effective upon the date of the certificate of revocation of dissolution is filed, but the revocation shall relate back to and take effect as of the effective date of the dissolution and any liability incurred by the limited liability company or a member after the dissolution and before the revocation shall be determined as if the dissolution had never occurred; and the limited liability company may resume or continue carrying on its business as if the dissolution had never occurred.

**Section 79-29-831. Effect of dissolution.** (1) The dissolution of a limited liability company does not terminate the authority of the registered agent of the limited liability company.

(2) The administrative dissolution of a limited liability company shall not impair the validity on any contract, deed, mortgage, security interest, lien or act of such limited liability company or prevent such limited liability company from defending any action, suit or proceeding with any court of this state.

(3) A member, manager or officer of a limited liability company is not liable for the debts, obligations or liabilities of such limited liability company solely by reason of the administrative dissolution of a limited liability company.

(4) A limited liability company that has been administratively dissolved may not maintain any action, suit or proceeding in any court of this state until such limited liability company is reinstated. An action, suit or proceeding may not be maintained in any court of this state by any successor or assignee of such limited liability company on any right, claim or demand

arising out of the transaction of business by such limited liability company after the administrative dissolution.

(5) A limited liability company that is dissolved pursuant to Section 79-29-801 or 79-29-803 continues its legal existence but may carry on only business necessary or appropriate to wind-up and liquidate its business and affairs under Section 79-29-809 and to notify claimants under Sections 79-29-817 and 79-29-819.

#### ARTICLE 9.

##### PROFESSIONAL LIMITED LIABILITY COMPANIES

**Section 79-29-901. Applicability of remaining articles of chapter.** The other provisions of this chapter apply to professional limited liability companies, both domestic and foreign, to the extent not inconsistent with the provisions of this article.

**Section 79-29-902. Article definitions.** As used in this article, unless the context requires otherwise:

(a) "Disqualified person" means an individual, general partnership, professional limited liability company, professional limited liability partnership or other entity that for any reason is or becomes ineligible under this article to be a member of a professional limited liability company.

(b) "Domestic professional limited liability company" means a professional limited liability company.

(c) "Foreign professional limited liability company" means a limited liability company formed for the purpose of rendering professional services under a law other than the law of this state.

(d) "Law" includes rules promulgated in accordance with Section 79-29-929.

(e) "Licensing authority" means the office, board, agency, court or other authority in this state empowered to license or otherwise authorize the rendition of a professional service.

(f) "Professional limited liability company" means a limited liability company, other than a foreign professional limited liability company, subject to the provisions of this article.

(g) "Professional service" means a service that may be lawfully rendered only by a person licensed or otherwise authorized by a licensing authority in this state to render the service, including, without limitation, certified public accountants, dentists, architects, veterinarians, osteopaths, physicians, surgeons and attorneys at law.

(h) "Qualified person" means an individual, general partnership, professional limited liability company, professional limited liability partnership or other entity that is eligible under this article to be a member of a professional limited liability company.

**Section 79-29-903. Election of professional limited liability company status.** (1) One or more persons may form a professional limited liability company by delivering to the Secretary of State for filing a certificate of formation which includes a statement that: (a) it is a professional limited liability company; and (b) its purpose is to render the specified professional services.

(2) Nothing in this article shall be construed to require a person rendering professional services in this state to render such services through a professional limited liability company or foreign professional limited liability company unless a law of this state other than this article so requires.

**Section 79-29-904. Purposes.** (1) Except to the extent authorized by subsection (2), a limited liability company may elect professional limited liability company status under Section 79-29-903, solely for the purpose of rendering professional services, including services ancillary to them, and solely within a single profession.



(2) A limited liability company may elect professional limited liability company status under Section 79-29-903 for the purpose of rendering professional services within two (2) or more professions, and for the purpose of engaging in any lawful business authorized by Section 79-29-117(1) to the extent the combination of professional purposes or of professional and business purposes is not prohibited by the licensing law of this state applicable to each profession in the combination.

**Section 79-29-905. General powers.** (1) Except as provided in subsection (2) of this section, a professional limited liability company has the powers enumerated in Section 79-29-117(2).

(2) A professional limited liability company may be a promoter, general partner, member, associate or manager of a partnership, joint venture, trust or other entity only if the entity is engaged solely in rendering professional services or in carrying on business authorized by the professional limited liability company's certificate of formation and not prohibited by the licensing laws applicable to each profession rendering services through the professional limited liability company.

**Section 79-29-906. Rendering professional services.** (1) A domestic or foreign limited liability company may render professional services in this state only through individuals licensed or otherwise authorized in this state to render the services.

(2) Subsection (1) of this section does not:

(a) Require an individual employed by a professional limited liability company to be licensed to perform services for the limited liability company if a license is not otherwise required;

(b) Prohibit a licensed individual from rendering professional services in the individual's capacity although the

individual is a member, manager, employee or agent of a domestic or foreign professional limited liability company;

(c) Prohibit an individual licensed in another state from rendering professional services for a domestic or foreign professional limited liability company in this state if not prohibited by the licensing authority.

**Section 79-29-907. Prohibited activities.** (1) A professional limited liability company may not render any professional service other than the professional service authorized by its certificate of formation.

(2) Subsection (1) of this section does not prohibit a professional limited liability company from investing its funds in real estate, mortgages, securities, or any other type of investment or from owning real or personal property appropriate for carrying on its business

**Section 79-29-908. Corporate name.** (1) The name of a domestic professional limited liability company and of a foreign professional limited liability company authorized to transact business in this state, in addition to satisfying the requirements of Sections 79-29-109 and 79-29-1007:

(a) Must contain the words "professional limited liability company" or the abbreviations "P.L.L.C." or "PLLC";

(b) May not contain language stating or implying that it is formed for a purpose other than that authorized by Section 79-29-904 and its certificate of formation; and

(c) Must conform with any rule promulgated by the licensing authority having jurisdiction over a professional service described in the limited liability company's certificate of formation.

(2) Sections 79-29-109 and 79-29-1007 do not prevent the use of a name otherwise prohibited by those sections if it is the personal name of a member or former member of the domestic or foreign professional limited liability company or the name of an

individual who was associated with a predecessor of the limited liability company.

**Section 79-29-909. Who may become members.** (1) No professional limited liability company organized under the provisions of this article may have as a member any person other than:

(a) Individuals who are authorized by law in this or another state to render a professional service described in the limited liability company's certificate of formation;

(b) A professional limited liability company, domestic or foreign, authorized by law in this state to render a professional service described in the limited liability company's certificate of formation;

(c) General partnerships in which all the partners are individuals or entities otherwise authorized by paragraph (a), (b) or (d) of this subsection (1) to be members of a professional limited liability company under this article;

(d) A professional limited liability partnership, domestic or foreign, authorized by law in this state to render a professional service described in the limited liability partnership's certificate of registration;

(e) Any other individual or entity not included in paragraph (a), (b), (c) or (d) of this subsection (1) if expressly authorized by the licensing authority having jurisdiction over the professional services described in the certificate of formation of the professional limited liability company.

(2) A licensing authority with jurisdiction over a profession may by rule restrict or condition, or revoke in part, the authority of a professional limited liability company subject to its jurisdiction to issue membership interests. A rule promulgated under this section does not, of itself, make a member of a professional limited liability company at the time the rule becomes effective a disqualified person.



(3) The certificate of formation may provide for additional limitations and restrictions on members or for additional qualifications of members and such limitations, restrictions or qualifications shall be valid and enforceable in each instance.

(4) Membership interests issued in violation of this section or a rule promulgated under this section are void.

**Section 79-29-910. Membership interest transfer restrictions.** (1) A member of a professional limited liability company may transfer the member's membership interests only to qualified persons. Unless otherwise prohibited by the certificate of formation or operating agreement, a member of a professional limited liability company may pledge the member's membership interest to a qualified person or to a disqualified person.

(2) A transfer of a membership interest made in violation of subsection (1), except one made by operation of law or court judgment, is void.

**Section 79-29-911. Compulsory acquisition of membership interests after death or disqualification of a member.** (1) A professional limited liability company must acquire, or cause to be acquired by a qualified person, a member's membership interest if:

(a) The member dies and the successor in interest to the deceased member is not a qualified person, except as provided in subsection (3) of this section,

(b) The member becomes a disqualified person, except as provided in subsection (3) of this section; or

(c) The membership interest is transferred by operation of law or court judgment to a disqualified person, except as provided in subsection (3) of this section.

(2) If a price for the membership interest is established in accordance with the certificate of formation or written operating agreement or by private agreement, that price controls. If the price is not so established, the limited liability company shall

acquire the membership interest in accordance with Section 79-29-912. If the disqualified person rejects the limited liability company's purchase offer made pursuant to Section 79-29-912, either the person or the limited liability company may commence a proceeding under Section 79-29-913 to determine the price of the membership interest.

(3) This section does not require the acquisition of membership interests in the event of disqualification if the disqualification lasts no more than five (5) months from the date the disqualification or transfer occurs. A member who becomes a disqualified person shall notify the limited liability company promptly.

(4) This section and Section 79-29-912 do not prevent or relieve a professional limited liability company from paying pension benefits or other deferred compensation for services rendered to a former member if otherwise permitted by law.

(5) A provision for the acquisition of membership interests contained in a professional limited liability company's certificate of formation or operating agreement, or in a private agreement, is specifically enforceable.

**Section 79-29-912. Acquisition procedure.** (1) If membership interests must be acquired under Section 79-29-911, the professional limited liability company shall deliver a written notice to the executor or administrator of the estate of its deceased member, or to the disqualified person or transferee, offering to purchase the membership interest at a price the limited liability company believes represents the membership interests' fair value as of the date of death, disqualification or transfer. The offer notice must be accompanied by the limited liability company's balance sheet for the most recent fiscal year ending prior to the date of death or disqualification, an income statement for that fiscal year, a reconciliation of members'



capital accounts for that fiscal year, and the latest available interim financial statements, if any.

(2) The disqualified person has thirty (30) days from the effective date of the notice to accept the limited liability company's offer or demand that the limited liability company commence a proceeding under Section 79-29-913 to determine the fair value of the disqualified person's membership interest. If the individual accepts the offer, the limited liability company shall make payment for the membership interests within sixty (60) days from the effective date of the offer notice (unless a later date is agreed on) upon the disqualified person's surrender of the disqualified person's membership interest to the limited liability company.

(3) After the limited liability company makes payment for the membership interest, the disqualified person has no further interest in the limited liability company.

**Section 79-29-913. Court action to appraise membership interests.** (1) If the disqualified member does not accept the professional limited liability company's offer under Section 79-29-912(2) within the thirty-day period, the member during the following thirty-day period may deliver a written notice to the limited liability company demanding that it commence a proceeding to determine the fair value of the membership interest. The limited liability company may commence a proceeding at any time during the sixty (60) days following the effective date of its offer notice. If it does not do so, the member may commence a proceeding against the limited liability company to determine the fair value of the disqualified person's membership interest.

(2) The limited liability company or disqualified member shall commence the proceeding in the chancery court of the county where the limited liability company's principal office, or, if none in this state, its registered office, is located. The limited liability company shall make the disqualified person a



party to the proceeding as in an action against the disqualified person's membership interest. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(3) The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the power described in the order appointing them, or in any amendment to it.

(4) The disqualified member is entitled to judgment for the fair value of the disqualified person's membership interest determined by the court as of the date of death, disqualification or transfer, together with interest from that date at a rate found by the court to be fair and equitable.

(5) The court may order the judgment paid in installments determined by the court.

(6) "Fair value" means the value of the membership interest of the professional limited liability company determined:

(a) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(b) Without discounting for lack of marketability or minority status.

**Section 79-29-914. Court costs and fees of experts. (1)**

The court in an appraisal proceeding commenced under Section 79-29-913 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court, and shall assess the costs against the professional limited liability company. But the court may assess costs against the disqualified member, in an amount the court finds equitable, if the court finds the member acted arbitrarily, vexatiously or not in good faith in refusing to accept the limited liability company's offer.

(2) The court may also assess the fees and expenses of counsel and experts for the disqualified member against the

limited liability company and in favor of the disqualified member if the court finds that the fair value of disqualified member's membership interest substantially exceeded the amount offered by the limited liability company or that the limited liability company did not make an offer.

**Section 79-29-915. Cancellation of disqualified membership interests.** If the membership interest of a disqualified person is not acquired under Section 79-29-912 or 79-29-913 within ten (10) months after the death of the member or within five (5) months after the disqualification or transfer, the professional limited liability company shall immediately cancel the membership interest on its books and the disqualified person has no further interest as a member in the limited liability company other than the disqualified member's right to payment of the fair value of the membership interest under Section 79-29-912 or 79-29-913.

**Section 79-29-917. Voting of membership interests.** (1) Only a qualified person may be appointed a proxy to vote the membership interest of a professional limited liability company.

(2) A voting trust with respect to membership interests of a professional limited liability company is not valid unless all of its trustees and beneficiaries are qualified persons. If a beneficiary who is a qualified person dies or becomes disqualified, a voting trust valid under this subsection continues to be valid for ten (10) months after the date of death or for five (5) months after the disqualification occurred.

**Section 79-29-918. Confidential relationship.** (1) The relationship between an individual rendering professional services as an employee of a domestic or foreign professional limited liability company and the individual's client or patient is the same as if the individual were rendering the services as a sole practitioner.

(2) The relationship between a domestic or foreign professional limited liability company and the client or patient



for whom its employee is rendering professional services is the same as that between the client or patient and the employee.

**Section 79-29-919. Privileged communications.** A privilege applicable to communications between an individual rendering professional services and the person receiving the services recognized under the statute or common law of this state is not affected by this article. The privilege applies to a domestic or foreign professional limited liability company and to its employees in all situations in which it applies to communications between an individual rendering professional services on behalf of the limited liability company and the person receiving the services.

**Section 79-29-920. Responsibility for professional services.**

(1) Each individual who renders professional services as an employee of a domestic or foreign professional limited liability company is liable for a negligent or wrongful act or omission in which the member personally participates to the same extent as if the member rendered the services as a sole practitioner. A member or an employee of a domestic or foreign professional limited liability company is not liable, however, for the conduct of other members or employees of the limited liability company, except a person under the member's direct supervision and control, while rendering professional services on behalf of the professional limited liability company to the person for whom such professional services were being rendered.

(2) A domestic or foreign professional limited liability company whose employees perform professional services within the scope of their employment or of their apparent authority to act for the limited liability company is liable to the same extent as its employees.

**Section 79-29-921. Merger.** (1) If all the members of the disappearing and surviving limited liability companies, unless prohibited by certificate of formation or the operating agreement,



are qualified to be members of the surviving limited liability company, a professional limited liability company may merge with another domestic or foreign professional limited liability company or with a domestic or foreign limited liability company.

(2) If the surviving limited liability company is to render professional services in this state, it must comply with this article.

**Section 79-29-922. Termination of professional activities.**

If a professional limited liability company ceases to render professional services, it must amend its certificate of formation to delete references to rendering professional services and to conform its name to the requirements of Section 79-29-109. After the amendment becomes effective the limited liability company may continue in existence as a limited liability company under this chapter other than the provisions of this article.

**Section 79-29-923. Judicial dissolution.** The Attorney General may commence a proceeding under Section 79-29-803 to dissolve a professional limited liability company if:

(a) The Secretary of State or a licensing authority with jurisdiction over a professional service described in the limited liability company's certificate of formation serves written notice on the limited liability company under Section 79-29-125 that it has violated or is violating a provision of this article;

(b) The limited liability company does not correct each alleged violation, or demonstrate to the reasonable satisfaction of the Secretary of State or licensing authority that it did not occur, within sixty (60) days after service of the notice is perfected under Section 79-29-125; and

(c) The Secretary of State or licensing authority certifies to the Attorney General a description of the violation, that it notified the limited liability company of the violation, and that the limited liability company did not correct it, or

demonstrate that it did not occur, within sixty (60) days after perfection of service of the notice

**Section 79-29-924. Authority to transact business.** (1) A foreign professional limited liability company may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

(2) A foreign professional limited liability company may not obtain a certificate of authority unless:

(a) Its name satisfies the requirements of Section 79-29-908;

(b) It is formed for one or more of the purposes described in Section 79-29-904; and

(c) All of its members would be qualified persons if the foreign professional limited liability company were a domestic professional limited liability company.

**Section 79-29-925. Application for certificate of authority.** The application of a foreign professional limited liability company for a certificate of authority to render professional services in this state must contain the information called for by Section 79-29-1003 and in addition include a statement that all of its members meet the requirements of Section 79-29-924

**Section 79-29-926. Revocation of certificate of authority.** The Secretary of State may administratively revoke the certificate of authority of a foreign professional limited liability company authorized to transact business in this state if a licensing authority with jurisdiction over a professional service described in the limited liability company's certificate of formation certifies to the Secretary of State that the limited liability company has violated or is violating a provision of this article and describes the violation. Such administrative revocation may be challenged by the foreign professional limited liability company in the chancery court of the county where the foreign



professional limited liability company maintains its principal place of business in this state.

**Section 79-29-930. Rulemaking by licensing authority.** Each licensing authority is empowered to promulgate rules expressly authorized by this article if the rules are consistent with the public interest or required by the public health or welfare or by generally recognized standards of professional conduct.

**Section 79-29-931. Licensing authority's regulatory jurisdiction.** This article does not restrict the jurisdiction of a licensing authority over individuals rendering a professional service within the jurisdiction of the licensing authority, nor does it affect the interpretation or application of any law pertaining to standards of professional conduct.

**Section 79-29-933. Application to existing professional limited liability companies.** (1) This article does not apply to a limited liability company now existing or later formed under a law of this state that is not a professional limited liability company unless the limited liability company elects professional limited liability company status under Section 79-29-903.

(2) This article does not affect an existing or future right or privilege to render professional services through the use of any other form of business entity.

(3) Unless otherwise specifically provided by an amendment to the certificate of formation, for professional limited liability companies in existence on July 1, 1995, Sections 79-29-912, 79-29-913 and 79-29-914 shall be applied by substituting the term "book value" for the term "fair value" in such sections only. Book value shall be determined from the books and records of the professional limited liability company in accordance with the regular method of accounting used by the professional limited liability company and shall be determined as of the end of the month immediately preceding the death or disqualification of the member.



ARTICLE 10..

FOREIGN LIMITED LIABILITY COMPANIES.

**Section 79-29-1001. Law governing.** (1) Subject to the Constitution of this state, the laws of the state or country or other jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members, and a foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of this state.

(2) A foreign limited liability company shall be subject to Section 79-29-117 of this chapter.

**Section 79-29-1003. Registrations; application to register foreign limited companies.** (1) Before transacting business in this state, a foreign limited liability company, including a foreign limited liability company formed to render professional services, shall register with the Secretary of State. In order to register, a foreign limited liability company shall deliver the application for registration of foreign limited liability company to the Office of the Secretary of State for filing, signed by a person with authority to do so under the laws of the state, country or other jurisdiction of its formation who is either a member, manager or officer of the foreign limited liability company and setting forth:

(a) The name of the foreign limited liability company which must meet the requirements of Section 79-29-1007 and, if different, the name under which it proposes to transact business in this state which must meet the requirements of Section 79-29-1007;

(b) The state or other jurisdiction and date of its formation and a statement that, as of the date of filing, the foreign limited liability company validly exists as a limited liability company under the laws of the jurisdiction of its formation;

(c) The name and street and mailing address of the registered agent for service of process on the foreign limited liability company which the foreign limited liability company has elected to appoint and who meets the requirements of Section 79-29-113(1)(b);

(d) A statement that the Secretary of State is appointed the registered agent of the foreign limited liability company for service of process if the registered agent's authority has been revoked or if the registered agent cannot be found or served with the exercise of reasonable diligence;

(e) The date on which the foreign limited liability company first did, or intends to do, business in the State of Mississippi.

(f) The address of the office required to be maintained in the state or other jurisdiction of its formation by the laws of that state or other jurisdiction or, if not so required, the address of the principal office of the foreign limited liability company;

(g) If the limited liability company is to have a specific date of dissolution, the latest date upon which the foreign limited liability company is to dissolve; and

(h) Any other matters the manager or members determine to include therein.

The person signing the application shall state the person's name, the capacity in which the person signs and the street and mailing address of the person beneath or opposite the person's signature. A document required or permitted to be delivered to the Office of the Secretary of State for filing under this chapter which contains a copy of a signature, however made, is acceptable for filing by the Secretary of State.

(2) The foreign limited liability company shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the Secretary of

State or other public official having custody of corporate records in the state or country under whose law it is formed.

**Section 79-29-1005. Issuance of registration.** If the Secretary of State finds that an application for registration meets the requirements of Sections 79-29-1003 and 79-29-1007 and all requisite fees as provided in Section 79-29-1203 have been paid, the Secretary of State shall:

(a) Certify that the application has been filed in the Secretary of State's office by endorsing upon the signed application the word "Filed" and the date and time of the filing. This endorsement is conclusive evidence of the date and time of its filing in the absence of actual fraud;

(b) File the application; and

(c) Return a copy to the person who delivered it for filing or that person's representative.

**Section 79-29-1007. Name.** A foreign limited liability company shall register with the Secretary of State under any name, whether or not it is the name under which it is registered in its state of organization, that includes the words "limited liability company" or the abbreviation "L.L.C." or "LLC" and that could be registered by a domestic limited liability company.

**Section 79-29-1009. Changes and amendments.** If any statement, arrangements or other facts described in the application for registration of a foreign limited liability company have changed, making the application inaccurate in any respect, the foreign limited liability company shall promptly amend the application by delivering to the Office of the Secretary of State for filing a certificate of amendment that includes the amendment to the certificate correcting such statement, signed and acknowledged by a person authorized to do so under the laws of the state or other jurisdiction of its formation who is either a member, manager or officer of the limited liability company, together with a fee as set forth in Section 79-29-1203.



**Section 79-29-1011. Cancellation of registration.** (1) A foreign limited liability company registered under this chapter shall cancel its registration upon completion of the winding-up of its affairs.

(2) A foreign limited liability company may cancel its registration whenever it ceases transacting business in this state.

(3) Registration is canceled by delivering to the Office of the Secretary of State for filing a certificate of cancellation signed by a person authorized to do so under the laws of the state or other jurisdiction of its formation and paying the fee set forth in Section 79-29-1203.

(4) A cancellation revokes the authority of the registered agent for service of process designated pursuant to Section 79-29-1003 and operates as a consent that the Secretary of State may accept service of process on the foreign limited liability company with respect to causes of action arising out of the transaction of business in this state.

**Section 79-29-1013. Transaction of business without registration.** (1) A foreign limited liability company transacting business in this state may not maintain any action, suit, or proceeding in any court of this state until it has registered in this state.

(2) The failure of a foreign limited liability company to register in this state does not:

(a) Impair the validity of any contract or act of the foreign limited liability company;

(b) Impair the right of any other party to the contract to maintain any action, suit or proceeding on the contract; or

(c) Prevent the foreign limited liability company from defending any action, suit, or proceeding in any court of this state.

(3) A member of a foreign limited liability company is not liable for the debts, obligations or liabilities of the foreign limited liability company solely by reason of the foreign limited liability company having transacted business in this state without registration.

(4) By transacting business in this state without registration, a foreign limited liability company appoints the Secretary of State as its registered agent for service of process with respect to causes of action arising out of the transaction of business in this state.

**Section 79-29-1015. Transactions not constituting transacting business.** (1) The following activities of a foreign limited liability company, among others, do not constitute transacting business in this state within the meaning of this article:

- (a) Maintaining, defending, or settling any proceeding;
- (b) Holding meetings of its members or managers or carrying on any other activities concerning its internal affairs;
- (c) Maintaining bank accounts;
- (d) Maintaining offices or agencies for the transfer, exchange and registration of the foreign limited liability company's own securities or interests or maintaining trustees or depositories with respect to those securities or interests;
- (e) Selling through independent contractors;
- (f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (g) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
- (h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts and holding, protecting and maintaining property so acquired;
- (i) Owning, without more, real or personal property;

(j) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature; or

(k) Transacting business in interstate commerce.

(2) A foreign limited liability company shall not be considered to be transacting business in this state solely because it:

(a) Is a shareholder in a corporation or a foreign corporation that transacts business in this state;

(b) Is a limited partner of a limited partnership or foreign limited partnership that is transacting business in this state; or

(c) Is a member or manager of a limited liability company or foreign limited liability company that is transacting business in this state.

(3) This section does not apply in determining the contracts or activities that may subject a foreign limited liability company to service of process or taxation in this state or to regulation under any other law of this state.

(4) A foreign limited liability company which is a general partner of any general or limited partnership, which partnership is transacting business in this state, is hereby declared to be transacting business in this state.

**Section 79-29-1017. Action by Attorney General.** The Attorney General may bring an action to restrain a foreign limited liability company from transacting business in this state in violation of this article.

**Section 79-29-1019. Execution; liability.** Section 79-29-207(4) shall be applicable to foreign limited liability companies as if they were domestic limited liability companies.

**Section 79-29-1021. Administrative revocation of registration of foreign limited liability company.** (1) The Secretary of State may commence a proceeding under Section



79-29-1023 to administratively revoke the registration of a foreign limited liability company authorized to transact business in this state if:

(a) The foreign limited liability company does not pay within sixty (60) days after they are due any fees imposed by this chapter or other law;

(b) The foreign limited liability company does not deliver its annual report to the Secretary of State within sixty (60) days after it is due;

(c) The foreign limited liability company is without a registered agent in this state for sixty (60) days or more;

(d) The foreign limited liability company does not notify the Secretary of State within sixty (60) days that its registered agent has been changed or that its registered agent has resigned;

(e) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other public official having custody of corporate records in the state or country under whose law the foreign limited liability company is organized stating that it has been dissolved or ceased to exist as the result of a merger; or

(f) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the foreign limited liability company to the Secretary of State pursuant to this chapter.

(2) The Secretary of State may not administratively revoke a registration of a foreign limited liability company unless the Secretary of State sends the foreign limited liability company notice of the administrative revocation under Section 79-29-1023, at least sixty (60) days before its effective date, by a record addressed to its registered agent, or to the foreign limited liability company if the foreign limited liability company fails to appoint and maintain a proper agent in this state. The notice

must specify the cause for the administrative revocation of the registration. The authority of the foreign limited liability company to transact business in this state ceases on the effective date of the administrative revocation unless the foreign limited liability company cures the failure before that date.

**Section 79-29-1023. Administrative revocation of registration, procedure and effect.** (1) If the Secretary of State determines that one or more grounds exist under Section 79-29-1021 for administrative revocation of registration, the Secretary of State shall serve the foreign limited liability company with written notice of the determination under Section 79-29-125, except that such determination may be served by first class mail.

(2) If the foreign limited liability company does not correct each ground for administrative revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after the service of the notice, the Secretary of State may administratively revoke the foreign limited liability company's registration by signing a certificate of administrative revocation that recites the ground or grounds for administrative revocation and its effective date. The Secretary of State shall file the original of the certificate of administrative revocation and serve the foreign limited liability company with a copy of the certificate of administrative revocation under Section 79-29-125, except that such certificate of administrative revocation may be served by first-class mail.

(3) The authority of a foreign limited liability company to transact business in this state ceases on the date shown on the certificate of administrative revocation.

(4) The Secretary of State's administrative revocation of a foreign limited liability company's registration appoints the Secretary of State the foreign limited liability company's agent



for service of process in any proceeding based on a cause of action which arose during the time the foreign limited liability company was authorized to transact business in this state.

Service of process on the Secretary of State under this subsection is service on the foreign limited liability company. Upon receipt of process and the payment of the fee specified in Section 79-29-1203, the Secretary of State shall mail a copy of the process to the foreign limited liability company at the office of its registered agent, or if the agent has resigned or cannot be located, at its principal office shown in its most recent communication received from the foreign limited liability company stating the current mailing address of its principal office, or, if none are on file, in its application for registration of foreign limited liability company.

(5) Administrative revocation of a foreign limited liability company's registration does not terminate the authority of the registered agent of the foreign limited liability company.

(6) The administrative revocation of the registration of a foreign limited liability company shall not impair the validity on any contract, deed, mortgage, security interest, lien or act of such foreign limited liability company or prevent the foreign limited liability company from defending any action, suit or proceeding with any court of this state.

(7) A member, manager or officer of a foreign limited liability company is not liable for the debts, obligations or liabilities of such foreign limited liability company solely by reason of the administrative revocation of the registration of a foreign limited liability company.

(8) A foreign limited liability company whose registration has been administratively revoked may not maintain any action, suit or proceeding in any court of this state until such foreign limited liability company's registration has been reinstated. An action, suit or proceeding may not be maintained in any court of



this state by any successor or assignee of such foreign limited liability company on any right, claim or demand arising out of the transaction of business by a foreign limited liability company after the administrative revocation.

**Section 79-29-1025. Administrative revocation of registration, appeal and reinstatement.** (1) A foreign limited liability company whose registration is administratively revoked under Section 79-29-1021 may apply to the Secretary of State for reinstatement at any time after the effective date of such administrative revocation. The application must:

- (a) Recite the name of the foreign limited liability company and the effective date of the administrative revocation;
- (b) State that the ground or grounds for administrative revocation either did not exist or have been eliminated; and
- (c) State that the foreign limited liability company's name satisfies the requirements of Section 79-29-1007.

(2) If the Secretary of State determines that the application contains the information required by subsection (1) of this section and that the information is correct, the Secretary of State shall reinstate the registration of a foreign limited liability company, prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate of reinstatement, and serve the foreign limited liability company with a copy of the certificate of reinstatement under Section 79-29-125, except that such certificate may be served by first class mail.

(3) When the reinstatement is effective:

- (a) The reinstatement relates back to and takes effect as of the effective date of the administrative revocation;
- (b) Any liability incurred by the foreign limited liability company or a member after the administrative revocation

and before the reinstatement shall be determined as if the administrative revocation had never occurred; and

(c) The foreign limited liability company may resume carrying on its business as if the administrative revocation had never occurred.

**Section 79-29-1027. Administrative revocation of registration, denial of reinstatement; further review.** (1) If the Secretary of State denies a foreign limited liability company's application for reinstatement of the registration following administrative revocation, the Secretary of State shall serve the foreign limited liability company with a record that explains the reason or reasons for denial.

(2) The foreign limited liability company may appeal the denial of reinstatement to the Chancery Court of the First Judicial District of Hinds County or the chancery court of the county where the foreign limited liability company is domiciled within thirty (30) days after service of the notice of denial is perfected. The foreign limited liability company appeals by petitioning the court to set aside the administrative revocation and attaching to the petition copies of the Secretary of State's certificate of administrative revocation, the foreign limited liability company's application for reinstatement and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the registration of the foreign limited liability company or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

**Section 79-29-1029. Certificate of authorization.** (1) The Secretary of State, upon request and payment of the requisite fee, shall furnish to any person a certificate of authorization for a foreign limited liability company if the records filed in the Office of the Secretary of State show that the foreign limited

liability company has registered as a foreign limited liability company, the registration has not been administratively revoked, and a certificate of cancellation has not been filed which has become effective. A certificate of authorization must state:

(a) The foreign limited liability company's name and any alternate name adopted under Section 79-29-1003(1)(a) for use in this state;

(b) That the foreign limited liability company is authorized to transact business in this state;

(c) Whether all fees due under this chapter to the Secretary of State have been paid,

(d) Whether the foreign limited liability company's most recent annual report required by Section 79-29-215 has been filed with the Secretary of State;

(e) Whether a certificate of administrative revocation of registration has been filed;

(f) Whether a certificate of cancellation of registration as a foreign limited liability company has been filed for the limited liability company; and

(g) Other facts of record in the Office of the Secretary of State which are specified by the person requesting the certificate.

(2) Subject to any qualification stated in the certificate, a certificate of authorization issued by the Secretary of State is conclusive evidence that the foreign limited liability company is authorized to transact business in this state.

#### ARTICLE 11.

#### DERIVATIVE ACTIONS

**Section 79-29-1101. Right to bring action.** A member or an owner of a financial interest may bring an action in chancery court in the right of a limited liability company to recover a judgment in its favor if managers or members with authority to do



so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed.

**Section 79-29-1103. Proper plaintiff.** In a derivative action, the plaintiff must be a member or an owner of a financial interest at the time of bringing the action and:

(a) At the time of the transaction of which the plaintiff complains; or

(b) The plaintiff's status as a member or an owner of a financial interest had devolved upon the plaintiff by operation of law or pursuant to the terms of an operating agreement from a person who was a member or an owner of a financial interest at the time of the transaction.

A plaintiff may not commence or maintain a derivative proceeding unless the plaintiff fairly and adequately represents the interests of the limited liability company in enforcing the right of the limited liability company.

**Section 79-29-1105. Complaint.** In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a manager or member pursuant to Section 79-29-1101 or the reasons for not making the effort.

**Section 79-29-1107. Stay of proceedings.** If the limited liability company commences an inquiry into the allegations made in the complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

**Section 79-29-1109. Dismissal.** (1) A derivative proceeding shall be dismissed by the court on motion by the limited liability company if one of the groups specified in subsection (2) or (6) of this section has determined in good faith, after conducting a reasonable inquiry upon which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the limited liability company.

(2) Unless a panel is appointed pursuant to subsection (6) of this section, the determination in subsection (1) of this section shall be made by one (1) of the following:

(a) A majority vote of independent managers present at a meeting of managers if independent managers constitute a majority of all managers;

(b) A majority vote of independent members at a meeting of the members, whether or not such independent members constituted a majority of all members; or

(c) A majority vote of a committee consisting of two (2) or more independent managers appointed by the majority vote of independent managers present at a meeting of managers, whether or not such independent managers constituted a majority of all managers.

(3) None of the following shall by itself cause a manager or member to be considered not independent for purposes of this section:

(a) The nomination or election of the manager by persons who are defendants in the derivative proceeding or against whom action is demanded;

(b) The naming of the manager or member as a defendant in the derivative proceeding or as a person against whom action is demanded; or

(c) The approval by the manager or member of the act being challenged in the derivative proceeding if the act resulted in no personal benefit to the manager or member.

(4) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a member, the complaint shall allege with particularity facts establishing either:

(a) That a majority of the persons making the determination under subsection (2) of this section were not independent at the time the determination was made; or

(b) That the requirements of subsection (1) of this section have not been met.

(5) If the determination in subsection (1) of this section is made by a committee pursuant to subsection (2)(c) of this section and a majority of managers are not independent at the time the determination is made, or if the determination in subsection (1) is made by the members pursuant to subsection (2)(b) of this section and a majority of the members are not independent at the time the determination is made, then the limited liability company shall have the burden of proving that the requirements of subsection (1) have been met. In all other cases, the plaintiff shall have the burden of proving that the requirements of subsection (1) of this section have not been met.

(6) The court may appoint a panel of one or more independent persons upon motion by the limited liability company to make a determination whether the maintenance of the derivative proceeding is in the best interests of the limited liability company. In such case, the plaintiff shall have the burden of proving that the requirements of subsection (1) of this section have not been met.

**Section 79-29-1111. Discontinuance or settlement.** A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the limited liability company's members or a class of members, the court shall direct that notice be given to the members affected.

**Section 79-29-1113. Payment of expenses.** (1) If a derivative action is successful, in whole or in part, as a result of a judgment, compromise or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from any recovery in any such action or from a limited liability company.



(2) On termination of the derivative proceeding the court may order the plaintiff to pay any defendant's reasonable expenses, including reasonable attorney fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose.

**Section 79-29-1115. Applicability to foreign limited liability companies.** In any derivative proceeding brought in the courts of this state in the right of a foreign limited liability company, the matters covered by this article shall be governed by this chapter.

#### ARTICLE 12.

#### MISCELLANEOUS.

**Section 79-29-1201. Construction and application.** (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(2) It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements.

(3) Unless the context otherwise requires, as used herein, the singular shall include the plural and the plural may refer to the singular. The captions contained herein are for the purposes of convenience only and shall not control or affect the construction of this chapter.

(4) As used herein, the words "include," "includes" and "including" will be deemed to be followed by the phrase "without limitation," whether or not such phrase is included therein.

**Section 79-29-1203. Fees.** (1) No document required to be filed under this chapter shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the Secretary of State for the use of the State of Mississippi:

(a) Filing of Reservation of Limited Liability Company Name or Transfer of Reservation, Twenty-five Dollars (\$25.00).

(b) Filing of Change of Address of Registered Agent, Twenty-five Dollars (\$25.00).

(c) Filing of Resignation of Registered Agent, Five Dollars (\$5.00).

(d) Filing of Certificate of Formation, Fifty Dollars (\$50.00).

(e) Filing of Amendment to Certificate of Formation, Fifty Dollars (\$50.00).

(f) Filing of Certificate of Dissolution, Fifty Dollars (\$50.00).

(g) Filing of Application for Registration of Foreign Limited Liability Company, Two Hundred Fifty Dollars (\$250.00) and Ten Dollars (\$10.00) for each day, but not to exceed a total of One Thousand Dollars (\$1,000.00) for each year the foreign limited liability company transacts business in this state without a registration as a foreign limited liability company.

(h) Filing of Certificate of Correction, Fifty Dollars (\$50.00).

(i) Filing of Certificate of Cancellation of Registration of Foreign Limited Liability Company, Fifty Dollars (\$50.00).

(j) Filing of an Annual Report of Domestic Limited Liability Company, (no fee).

(k) Filing of an Annual Report of Foreign Limited Liability Company, to be deposited in the Elections Support Fund created in Section 2 of House Bill No. 683, 2010 Regular Session, Two Hundred Fifty Dollars (\$250.00).

(l) Certificate of Administrative Dissolution, (no fee).

(m) Filing of Application for Reinstatement Following Administrative Dissolution, Fifty Dollars (\$50.00).

(n) Certificate of Administrative Revocation of Authority to Transact Business. (no fee).

(o) Filing of Application for Reinstatement Following Administrative Revocation, One Hundred Dollars (\$100.00).

(p) Certificate of Reinstatement Following Administrative Dissolution, (no fee).

(q) Certificate of Reinstatement Following Administrative Revocation of Authority to Transact Business, (no fee).

(r) Filing of Certificate of Revocation of Dissolution, Twenty-five Dollars (\$25.00).

(s) Application for Certificate of Existence or Authorization, Twenty-five Dollars (\$25.00).

(t) Any other document required or permitted to be filed under this chapter, Twenty-five Dollars (\$25.00).

(2) The Secretary of State shall collect a fee of Twenty-five Dollars (\$25.00) each time process is served on the Secretary of State under Section 79-29-101 et seq.

(3) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign limited liability company:

(a) One Dollar (\$1.00) a page for copying; and

(b) Ten Dollars (\$10.00) for the certificate.

(4) The Secretary of State may promulgate rules to:

(a) Reduce the filing fees set forth in this section or provide for discounts of fees as set forth in this section to encourage online filing of documents or for other reasons as determined by the Secretary; and

(b) Provide for documents to be filed and accepted on an expedited basis upon the request of the applicant. The Secretary may promulgate rules to provide for an additional reasonable filing fee to be paid by the applicant and collected by the Secretary for the expedited filing services.



(5) This section shall stand repealed on July 1, 2012.

**Section 79-29-1205. Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

**Section 79-29-1207. Powers of the Secretary of State.** The Secretary of State shall have the powers reasonably necessary to perform the duties required of the Office of the Secretary of State under the provisions of this chapter.

**Section 79-29-1209. Relation to Electronic Signatures in Global and National Commerce Act.** This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 USCS Section 7001 et seq., but does not modify, limit or supersede Section 101(c) of that act, 15 USCS Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 USCS Section 7003(b).

**Section 79-29-1211. Enforceability of written agreements to choose forum, authorize arbitration and to choose prescribed manner of service of process.** In a written operating agreement or other writing, a manager, member or officer may consent to be subject to the nonexclusive jurisdiction of the courts of, or arbitration in, a specified jurisdiction, or the exclusive jurisdiction of the courts of this state, or the exclusivity of arbitration in a specified jurisdiction or in this state, and to be served with legal process in the manner prescribed in such operating agreement or other writing. Except by agreeing to arbitrate any arbitrable matter in a specified jurisdiction or in this state, a member who is not a manager may not waive its right to maintain a legal action or proceeding in the courts of this

state with respect to matters relating to the organization or internal affairs of a limited liability company.

#### ARTICLE 13.

##### TRANSITION PROVISIONS

**Section 79-29-1301. Applicability upon effective date.** On or after the effective date of this chapter, this chapter applies to:

(a) A domestic limited liability company formed on or after the effective date of this chapter; and

(b) A foreign limited liability company entity that is not registered with the Secretary of State to transact business in this state before the effective date of this chapter.

**Section 79-29-1303. Early effectiveness of fees and annual reports.** (1) On or after the effective date of this chapter, the fees required by Section 79-29-1203 apply to all filings made with the Secretary of State, including comparable filings under prior law, regardless of whether a limited liability company is subject to or has adopted this chapter. The intent of this section is to require a filing fee for all documents filed under either this chapter or the prior law without regard to the difference in designation of the document.

(2) On or after the effective date of this chapter, Sections 79-29-215, 79-29-219, 79-29-821, 79-29-823, 79-29-825, 79-29-827 and 79-29-831, shall apply to all domestic limited liability companies formed before or after the effective date of this chapter and Sections 79-29-215, 79-29-1021, 79-29-1023, 79-29-1025, 79-29-1027 and 79-29-1029 shall apply to all foreign limited liability companies registered with the Secretary of State before or after the effective date of this chapter.

**Section 79-29-1305. Early adoption of this chapter by existing limited liability company.** A domestic limited liability company formed before the effective date of this chapter may voluntarily elect to adopt and become subject to this chapter by:



(a) Adopting the chapter by complying with the procedures for approval, under prior law and its organizational documents, of an amendment to its certificate of formation;

(b) Amending any noncomplying organizational documents to comply with this chapter if any of its organizational documents, including its certificate of formation, do not comply with this chapter by complying with the procedures, under prior law and its organizational documents, to amend the noncomplying organizational documents to comply with this chapter, including filing with the Secretary of State in accordance with Section 79-29-203 a certificate of amendment to cause its certificate of formation to comply with this chapter; and

(c) Filing with the Secretary of State in accordance with Section 79-29-203 a statement that the domestic limited liability company is electing to adopt this chapter.

**Section 79-29-1307. Early adoption of chapter by registered foreign limited liability company.** A foreign limited liability company registered with the Secretary of State to transact business in this state before the effective date of this chapter may voluntarily elect to adopt and become subject to this chapter by filing with the Secretary of State in accordance with Section 79-29-203:

(a) A statement that the foreign limited liability company is electing to adopt this chapter; and

(b) An amendment to its registration of foreign limited liability company that would cause its certificate of registration of foreign limited liability company to comply with this chapter.

**Section 79-29-1309. Applicability to existing limited liability companies.** On or after January 1, 2012, such date referred to in this article as the "mandatory application date," if a domestic limited liability company formed before January 1, 2011, or a foreign limited liability company registered with the Secretary of State to transact business in this state before



January 1, 2011, has not taken the actions specified by Section 79-29-1305 or 79-29-1307 to elect to adopt this chapter:

(a) This chapter applies to the domestic or foreign limited liability company and all actions taken by the managers, officers, or members of the limited liability company, except as otherwise expressly provided by this article;

(b) A domestic or foreign limited liability company shall not be considered to have failed to comply with this chapter if the entity's certificate of formation or application for registration of foreign limited liability company, as appropriate, does not comply with the chapter;

(c) A domestic limited liability company shall conform its certificate of formation to the requirements of this chapter when it next files an amendment to its certificate of formation; and

(d) A foreign limited liability company shall conform its registration of foreign limited liability company to the requirements of this chapter when it next files an amendment to its registration of foreign limited liability company.

**Section 79-29-1311. Applicability to certain acts, contracts, and transactions.** All of the provisions of this chapter govern the acts, contracts, or other transactions by a limited liability company subject to Section 79-29-1301 or by its managers, members or officers that occur on or after January 1, 2011. Unless the limited liability company that is formed or registered before January 1, 2011, has elected to be subject to the Revised Act prior to the mandatory application date the prior law governs the acts, contracts, or transactions of the limited liability company that is formed or registered before January 1, 2011, or its managers, members or officers that occur before the mandatory application date.

**Section 79-29-1313. Indemnification.** Section 79-29-123 governs any proposed indemnification by a limited liability

company after the mandatory application date, regardless of whether the events on which the indemnification is based occurred before or after the mandatory application date. In a case in which indemnification is permitted but not required under Section 79-29-123, a provision relating to indemnification contained in the organizational documents of a limited liability company on the mandatory application date that would otherwise have the effect of limiting the nature or type of indemnification permitted by Section 79-29-123 may not be construed after the mandatory application date as limiting the indemnification authorized by Section 79-29-123 unless the provision so intended to limit or restrict permissive indemnification under applicable law.

**Section 79-29-1315. Dissolution.** (1) (a) Section 79-29-803 applies to an action for judicial dissolution commenced after the mandatory application date; or

(b) Section 79-29-801 applies to a voluntary dissolution initiated after the mandatory application date.

(2) The prior law governs:

(a) An action described by subsection (1)(a) of this section that is pending on the mandatory application date; or

(b) A proceeding described by subsection (1)(b) of this section initiated before the mandatory application date.

**Section 79-29-1317. Maintenance of prior action.** Except as expressly provided by this article, this chapter does not apply to an action or proceeding commenced before the mandatory application date. Prior law applies to the action or proceeding.

**SECTION 2.** (1) There is created in the State Treasury a special fund to be known as the Elections Support Fund. Monies derived from annual report fees imposed upon limited liability companies under Section 79-29-1203 shall be deposited into the Elections Support Fund. Unexpended amounts remaining in the fund at the end of the fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on



amounts in the fund shall be disbursed as provided in subsection (2) of this section. The expenditure of monies in the fund shall be under the direction of the Secretary of State as provided by subsection (2) of this section, and such funds shall be paid by the State Treasurer upon warrants issued by the Department of Finance and Administration.

(2) (a) Monies in the fund shall be used as follows:

(i) Fifty percent (50%) of the monies in the special fund shall be distributed annually to the counties, based on the proportion that the population of a county bears to the total population in all counties of the state population according to the most recent information from the United States Census Bureau, for the purpose of acquiring, upgrading, maintaining or repairing voting equipment, systems and supplies, hiring temporary technical support, conducting elections using such voting equipment or systems and training election officials; and

(ii) The remaining fifty percent (50%) of the monies in the special fund shall be allocated annually to the Secretary of State and expended for the purpose of maintaining, upgrading or equipping the Statewide Elections Management System.

(b) The Secretary of State shall create standard training guidelines to assist counties in training election officials with the funds authorized under subsection (2)(a)(ii) of this section. Any criteria established by the Secretary of State for the purposes of this section shall be used in addition to any other training or coursework prescribed by the Secretary of State to train circuit clerks, poll managers and any other election officials participating in county elections.

(c) Notwithstanding any other provision of law, no monies from the Elections Support Fund shall be used by the Secretary of State or any person associated with the Office of the Secretary of State to provide or otherwise support expert



testimony in any manner for any hearing, trial or election contest

**SECTION 3.** Sections 79-29-101, 79-29-102, 79-29-103, 79-29-104, 79-29-105, 79-29-106, 79-29-107, 79-29-108, 79-29-109, 79-29-110, 79-29-111, 79-29-112, 79-29-201, 79-29-202, 79-29-203, 79-29-204, 79-29-205, 79-29-206, 79-29-207, 79-29-208, 79-29-209, 79-29-210, 79-29-211, 79-29-212, 79-29-213, 79-29-214, 79-29-301, 79-29-302, 79-29-303, 79-29-304, 79-29-305, 79-29-306, 79-29-307, 79-29-308, 79-29-401, 79-29-402, 79-29-403, 79-29-501, 79-29-502, 79-29-503, 79-29-504, 79-29-601, 79-29-602, 79-29-603, 79-29-604, 79-29-605, 79-29-606, 79-29-701, 79-29-702, 79-29-703, 79-29-704, 79-29-705, 79-29-801, 79-29-802, 79-29-803, 79-29-804, 79-29-805, 79-29-806, 79-29-807, 79-29-901, 79-29-902, 79-29-903, 79-29-904, 79-29-905, 79-29-906, 79-29-907, 79-29-908, 79-29-909, 79-29-910, 79-29-911, 79-29-912, 79-29-913, 79-29-914, 79-29-915, 79-29-917, 79-29-918, 79-29-919, 79-29-920, 79-29-921, 79-29-922, 79-29-923, 79-29-924, 79-29-925, 79-29-926, 79-29-930, 79-29-931, 79-29-933, 79-29-1001, 79-29-1002, 79-29-1003, 79-29-1004, 79-29-1005, 79-29-1006, 79-29-1007, 79-29-1008, 79-29-1009, 79-29-1010, 79-29-1101, 79-29-1102, 79-29-1103, 79-29-1104, 79-29-1105, 79-29-1106, 79-29-1107, 79-29-1201, 79-29-1202, 79-29-1203 and 79-29-1204, Mississippi Code of 1972, which comprise the Mississippi Limited Liability Company Act, are hereby repealed

**SECTION 4.** This act shall take effect and be in force from and after January 1, 2011.

PASSED BY THE HOUSE OF REPRESENTATIVES  
March 26, 2010

  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE  
March 26, 2010

  
PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

  
GOVERNOR